**Violence, compensation, and settler colonialism: Adjudicating claims of Indian Residential
School abuse through the Independent Assessment Process**

by

Konstantin S. Petoukhov

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Department of Sociology & Anthropology

Carleton University

Ottawa, Ontario

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Abstract

Under the Indian Residential Schools Settlement Agreement, the Independent Assessment Process (IAP) was established to provide financial compensation for sexual and physical abuse that took place in Indian Residential Schools – boarding schools designed to assimilate Indigenous children into Canadian settler society. In my dissertation I centre my analysis on settler colonial power to investigate how the IAP, which I theorize as a response to and a product of settler colonial violence, constitutes survivors of abuse and how it is simultaneously constituted by survivors' agency. I explore how various actors within the IAP, including lawyers, adjudicators, and health support workers, engage in performative labour that mobilizes discourses of victimization and victimhood to construct representations of survivors' experiences through hierarchies and ordering mechanisms. I argue that the IAP constitutes a settler colonial legal process that inflicts violence on survivors, revictimizes and disempowers them, and perpetuates settler colonial denial. I also evaluate the compensation chart, which is used by IAP lawyers and adjudicators to calculate IAP awards, as a discursive tool that transvalues abuse and harm for money and guides survivors' interpretations of their experiences. Finally, I examine how survivors mobilize agency and engage in transgressive politics that resist the settler colonial logics of the IAP, challenge the scope of the individual financial compensation model, and re-establish themselves as Indigenous subjects.

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Chapter 1: Introduction

“The Independent Assessment Process was not a victory. I think it was kind of insulting.” – Jack White, survivor, Shingwauk Indian Residential School

1.1 Overview of the project

In 2007, former Indian Residential School students began to submit applications for financial compensation for the sexual and physical abuse they experienced while attending the schools. The compensation process, which is officially known as the Independent Assessment Process (IAP), required survivors of abuse to complete an application form, strongly recommended that they solicit legal representation, and appointed health and cultural support workers to assist them through the emotionally difficult hearings process at which adjudicators determine the value of their claims. My dissertation draws on qualitative interviews with survivors, health support workers, lawyers, and leaders of Indigenous advocacy organizations to explore the IAP as a socially constructed process that engages in discursive representations of survivors’ experiences of abuse and how it constitutes both a product and response to settler colonial violence. It mobilizes scholarship on critical victimology, settler colonial studies, and individual reparations to investigate how power structures discourses and narratives of violence. Specifically, it considers how the IAP represents an ordering process that constructs various hierarchies of victimization and victimhood that privilege the experiences of some survivors while discounting others. In the course of its theoretical and empirical investigation, it also examines how survivors stage resistance to settler colonial logics of the IAP and engage in transgressive politics that bring attention to ongoing structural violence. In particular, it explores how survivors appropriate the IAP hearings to assert their indigeneity through truth-telling, construct counter-narratives to

challenge the hegemony of the IAP, and refuse to participate in the IAP to resist its violent logics.

I frame parts of this chapter around a conversation I held in the course of my dissertation research with one of the survivors, Murray Crowe¹, who was a community leader and regularly participated in commemoration and storytelling events at Toronto Council Fire Native Cultural Centre, which is mandated to support the wellbeing of First Nations people, including Indian Residential School survivors. I am sharing Murray's story because it reflects the lived experiences and realities of a survivor who participated in a financial compensation process that was established to redress claims of Indian Residential School abuse. For Murray, the compensation process was especially painful because he participated in the IAP's predecessor, the Alternative Dispute Resolution Process (ADRP)², which was by many accounts a brutal and hostile process, as it did not have many of the safeguards of the IAP³. His story also speaks to some of the key themes emerging in my analytic dissertation chapters and reflects the patterns that materialized in my interviews with other survivors, including the widespread emotional trauma, the depth of structural violence, and revictimization by a Western legal process.

1.1.1 Research questions and reflections on the research process

My dissertation aims to answer several research questions in relation to the IAP. The overarching research question that frames my dissertation is: How do individual material reparations constitute victims in the settler colonial context? In answering this question, my dissertation

¹ Murray Crowe passed away in November 2016.

² I discuss the ADRP later in this chapter.

³ Murray's experience in the ADRP is relevant to my discussion because although the ADRP and IAP were two distinct legal processes, they shared a number of similarities: they both adjudicated claims of physical and sexual abuse; they issued financial compensation to survivors based on the severity of abuse; and they involved a similar network of actors, including lawyers, adjudicators, and health support workers.

explores how settler colonialism complexifies reparative responses and, using the IAP as a case study, investigates how financial compensation for acute and visible violence represents an extension of unjust power relations between the colonizer and colonized. These power relations interpellate victims with a particular set of qualities that are imbued with dominant Western legal discourses and narratives of victimization and victimhood.

My dissertation also interrogates the performative labour of IAP stakeholders, including health and cultural support workers, lawyers, and adjudicators, by asking the following question: How do key IAP stakeholders engage in constructions of discursive representations of survivors' realities and experiences of Indian Residential School abuse? Through this question, my research will explore how settler colonial power is mobilized in the professional and institutional capacity of the actors who are officially sanctioned and authorized to construct narratives of victimization and victimhood.

My dissertation also investigates the IAP as product of the Western legal system that is foreign to survivors and constitutes a violent process. Specifically, my dissertation asks: How does the IAP inflict violence on survivors? This question will explore how a financial compensation process that, despite its mandate to redress certain types of settler colonial violence and associated harm, revictimizes survivors. In answering this question, my dissertation positions the IAP as a manifestation of the Canadian legal system that incorporates various settler colonial logics and ideologies, in which settler colonial power plays a central role.

Finally, my dissertation asks: How do survivors engage in transgressive politics that resist, challenge, and contest the settler colonial logics and ideologies of the IAP? This question will centre on survivor agency, politicization of their experiences of abuse, and the strategies that survivors engage to appropriate the IAP in order to de-individualize and collectivize individual

financial compensation and to bring attention to settler colonial structural violence. This question will also explore how survivors re-establish their indigeneity in the IAP and, by speaking their truths, mobilize the IAP hearings by advancing an anti-colonial agenda.

1.2 A brief history of redress for Indian Residential School abuse

In the 1990s and early 2000s, former Indian Residential School students began to launch individual and class-action lawsuits, including the landmark *Cloud* class-action lawsuit, alleging gross and severe maltreatment at the schools. These schools were in existence from the mid-1800s to the late 1900s and functioned as “total institutions” that sought to absorb Indigenous children into White settler society by way of religious proselytization and cultural assimilation (McKegney 2007)⁴. The defendants in these lawsuits were the Government of Canada, which funded the schools, and the churches, which managed the schools. By 2005, the number of lawsuits reached 18,000 and threatened to bankrupt the government and churches, at which point they made the decision to enter negotiations with the plaintiffs to settle the lawsuits. As a result, the *Indian Residential Schools Settlement Agreement* (IRSSA) was negotiated in 2005, finalized in 2006, and implemented in 2007 as a court-ordered settlement that required the government to fulfil its legal responsibilities and obligations toward survivors (Truth and Reconciliation Commission of Canada 2015b).

The Assembly of First Nations represented the interests of survivors in the IRSSA negotiations and published a report in 2004 outlining its demands for compensation for Indian Residential School abuse (Assembly of First Nations 2004). The spirit of the IRSSA was often thought to be both compensatory and reconciliatory, meaning that it not only compensated

⁴ For literature on the history of the Indian Residential School system and its violence, see for example, James R. Miller, 1996. *Shingwauk's Vision: A History of Native Residential Schools*. Toronto: University of Toronto Press.

individual students for the abuse, but also sought to foster a wider engagement and participation of non-Indigenous Canadians in the activities of the IRSSA, such as the Truth and Reconciliation Commission's public events (Truth and Reconciliation Commission of Canada n.d.).

The IRSSA consisted of several components. In addition to the compensation for sexual and serious physical abuse under the Independent Assessment Process, the IRSSA contained the Common Experience Payment (CEP) that was designed to compensate eligible former students for their overall negative experience of attending Indian Residential Schools. The Truth and Reconciliation Commission, in turn, was mandated to uncover the truth about the schools and to "pave the way to reconciliation" (Truth and Reconciliation Commission of Canada n.d.). The IRSSA also allocated funds for the Aboriginal Health Foundation that sought to address the legacy of Indian Residential School abuse. Finally, the IRSSA established a commemoration fund to "honour, educate, remember, memorialize and/or paying tribute to residential school former students, their families and their communities and acknowledging their experiences and the broad and systemic impacts of the residential school system" (IRSSA, Schedule "J").

The IRSSA is a unique case study of an official mechanism of redress precisely because it is a court-ordered settlement rather than a legislated and politically established process that typically enacts measures of redress for political violence (Teitel 2000). One of the implications for the IRSSA as a court-ordered process is that it was not debated in parliament by elected representatives and ran largely behind closed doors, which raises questions around how the public would react to the IRSSA, considering the fact that members of the public, interest groups, and civil society organizations were not widely consulted on the IRSSA. Further, the government did not issue an official public apology until a year after the IRSSA was implemented, which made members of Indigenous and non-Indigenous public question whether

the IRSSA was merely a mechanism to pay off former students without expressing remorse and acknowledging the injustice of the Indian Residential Schools.

The establishment of the IRSSA followed the demise of the Alternative Dispute Resolution Process (ADRP) that was established in 2002 as a means to compensate survivors of Indian Residential School abuse by issuing one-time lump-sum payments to successful claimants. For some survivors, the ADRP presented an attractive alternative for resolving their claims of abuse outside the court system because it was, on average, a less adversarial and much quicker process (Regan 2010). From the government's point of view, the advantage of the ADRP was that it would divert the lawsuits from the courts that threatened to clog them for many years to come. Ultimately, the ADRP failed because it revictimized former students, imposed an unfair burden of proof on the applicants, and failed to conduct adequate levels of consultations with survivors (Assembly of First Nations 2004; Canadian Bar Association 2005).

The IAP has processed over 38,000 claims since its inception, with a success rate of 89% and more than 26,000 hearings held⁵. As of September 2018, the IAP is still ongoing with more than 400 claims in progress, which include 240 claims of student-on-student abuse, and will continue to run until approximately 2020 (Indian Residential School Adjudication Secretariat n.d.-b). Successful claims are awarded anywhere between \$5,000 to \$275,000⁶. Claims of sexual abuse typically receive higher amounts (up to \$275,000) than claims of physical abuse (up to \$35,000). In total, over \$3.16 billion dollars has been issued through the IAP to date, with an average payout of \$91,602 (Indian Residential Schools Adjudication Secretariat n.d.).

⁵ Survivors may choose to enter a Negotiated Settlement Process (NSP) directly with the Government of Canada rather than attend a hearing with an adjudicator. The NSP provides survivors with an option to receive financial compensation payments that are negotiated between their lawyers and counsel representing the Crown.

⁶ Amounts may be higher depending on the aggravating factors that I discuss in the "Compensation Model" chapter.

To participate in the IAP, survivors typically contact a law firm or a lawyer of their choice and inform them of their decision to file a claim. In the early years of the IAP, it was common practice among lawyers and law firms to contact survivors directly and to inform them of legal services that they provided for IAP claimants. With or without the help of lawyers, survivors complete an application form, formally known as the “IAP Application Guide” (Indian Residential Schools Adjudication Secretariat 2013b) and submit it to the Indian Residential School Adjudication Secretariat for consideration. If after its assessment of the claim the Secretariat deems that the claim falls within the IAP framework, then a hearing is scheduled and the survivor and his or her counsel are notified. At an IAP hearing, the IAP adjudicator determines the credibility and reliability of evidence that survivors submit through written and oral testimony. Survivors submit written testimony as part of the application process in advance of the hearing, while oral testimony is given in-person at the hearing before the adjudicator. Survivors are permitted to invite family members, health support workers, and community members to their hearings. After their hearing are over, survivors await the adjudicators’ decisions that may result either in financial compensation awards or denial of their claims. Survivors have the option to appeal the decision, which is often made in consultation with their lawyers.

The now-defunct Common Experience Payment process consisted of financial compensation packages for which all former students were eligible to apply until September 2011. The CEP provided \$10,000 to former students for the first year of their attendance of a Indian Residential School and an additional \$3,000 for each subsequent year (Indian and Northern Affairs Canada 2006). Its intent was to capture a broad spectrum of Indian Residential School violence that was much less justiciable within the legal framework and much less defined

and more ambiguous than the rigid and pre-determined categories of the IAP (Reimer 2010:5). The IRSSA facilitated the division of labour between the IAP and CEP: while the IAP addressed sexual and serious physical abuse, the CEP's mandate was much broader and more ambiguous, which sought to "recognize the experience of living at an Indian Residential School(s) and its impacts" (Indigenous and Northern Affairs Canada 2013). To be eligible, former students were required to have been listed *as* students in a recognised Indian Residential School's records. Eligible Indian Residential Schools were operated and funded by the Government of Canada, located off-reserve, and the removal of the children and their placement into the school was authorised by the Canadian government (Dion Stout and Harp 2007; Indigenous and Northern Affairs Canada 2013).

In addition to compensating survivors for their Indian Residential School experiences, the CEP and IAP sparked public discussion and about the extent of abuse and its impacts on survivors. Murray Crowe shared with me that the financial compensation process brought other survivors together, who then began to tell their stories publically to expose the Indian Residential School legacies. The CEP and IAP have helped survivors to forge a collective consciousness that united them in their experiences of Indian Residential School abuse: "That's what brought me out and I also wanted to meet other survivors. And I was hiding until that time, even my wife didn't know." The collective experiences of former students helped to identify the widespread personal and communal dysfunction⁷ as a systemic issue, to lift stigma from survivors, and to make sense of their present state of mental health and physical wellbeing. For Murray personally, the legacy of abuse and the consequences of the Indian Residential Schools more generally resulted in deep emotional trauma that he kept hidden from his family for years:

⁷ For a comprehensive overview of the Indian Residential School legacy, please consult Marlene Brant Castellano, Linda Archibald, and Mike DeGagné. 2008. *From Truth to Reconciliation: Transforming the Legacy of Residential Schools*. Ottawa: Aboriginal Healing Foundation.

This is the hardest part for me to talk about. Because I was hiding it. And when I told my wife, she jumped out of her seat. She said to me, “How can you hide something like that? How can you hide something like that for 22 years?” And I told her I was ashamed. And my daughter, she had tears in her eyes and she was 18, and she used to ask mom, “Why is dad crying at night?” This was when she was 6 or 7. Mom said, “I don’t know. Something happened to your dad, I don’t know what it is.” That’s what she told my daughter. My son was sitting there, he had tears in his eyes too. And my son told me, “I didn’t know this happened to you, and you never told nobody.”

Indeed, it was only during the IAP and CEP compensation processes that survivors revealed the truth about their experiences for the first time.

1.3 Overview of the arguments

My dissertation research problematizes the use of individual material reparations, specifically financial compensation, as a method of redress for Indian Residential School violence. I position the IAP as a legal process in which the interests of powerful actors – lawyers, adjudicators, and health support workers – construct representations of survivors’ experiences. These experiences are constructed by drawing on narrow and limited discourses of abuse and harm, which function predominantly in an individualized manner and exclusively in relation to physical and sexual violence. My interview with Murray Crowe suggests that the financial compensation for Indian Residential School violence represents an overly legalistic, alienating, and bureaucratic process that necessitates the presence of lawyers who often prepare the IAP applications on behalf of survivors by selectively extracting factual and empirically verifiable elements from their experiences of abuse. Murray shared with me that he was almost entirely removed from the application process insofar as his team of lawyers prepared his entire application for him: “you don’t really do any paperwork yourself, the lawyer does all that.”

What Murray’s lawyers required from him was to disclose facts related to his abuse in order to comply with the prescribed narratives of violence or risk losing legal representation. As

Murray Crowe shared with me, his lawyers were interested primarily in his experiences of sexual and physical abuse at the Indian Residential School he attended: “what I told him was that I was physically abused. And while I was there, I was sexually abused by a female staff. And I was only 7 and 8.” To this end, IAP lawyers played an active role in preparing him for the hearings by constructing him as a particular types of claimant, or what I refer to later in my dissertation as “ideal” claimants – those who comply with the prescribed narratives of abuse and display qualities that render them credible and reliable witnesses of their own experiences.

Murray recalled from his conversations with survivors who participated in the IAP that law firms often refused to prepare claims if survivors were not sexually abused: “some lawyers won’t take you if you were not sexually abused.” Law firms representing claimants work on contingency fees and their preferred types of claims are those that allege sexual abuse because they typically result in higher compensation amounts than claims of physical abuse. This profit-driven model positions sexual violence as the highest compensable category and acts as the standards against which survivor’s experiences are transvalued for money. Similarly, at the IAP hearings, survivors were required to be sufficiently injured to receive compensation: “These other survivors tell me that they were rejected because they didn’t disclose sexual abuse. And they said that the only way you’re going to get the money is when you talk about your sexual abuse. I don’t know why.” My dissertation explores how the IAP constructs hierarchies of victimization and how lawyers and adjudicators participate in defining the types of violence and harms that are considered legitimate while others are denied recognition. These hierarchies of victimization and victimhood are, in part, structured by the IAP’s compensation rules that deny survivors’ subjectivities regarding what constitutes abuse and harm and force them to interpret

their Indian Residential School experiences exclusively in relation to compensable physical and sexual violence.

My dissertation explores the IAP not only as a mechanism of redress, but also as a violent enterprise that perpetuates denial of responsibility for the injury and associated harm. In Murray's case, denial was reflected in the assumption that his story of abuse was not to be believed unless it was verified through factual evidence: "And then they ask you questions, you know, where you went to school, what school, where you come from, how old were you, and then stuff like that. And then everything you tell them, they investigate it." My dissertation examines how the IAP inflicts symbolic violence by treating survivor testimony with suspicion. The IAP establishes a hierarchy of credibility and reliability of survivors' claims through expert knowledge that treats survivor testimony as secondary sources of information about the violence they have experienced first-hand.

The legalistic and bureaucratic model that comprises the foundations of the IAP revictimizes survivors by asking them to share their testimony in accordance with the temporal standards established and enforced by institutional administrators. My research explores how the IAP inflicts temporal violence on survivors by forcing them to share their testimony in a way that they often find deeply traumatizing. For example, during his application process, Murray faced time constraints and limits that put pressure on him to rush and share his testimony according to the legal requirements of the process: "there were two lawyers that helped me fill [out the application]. It took three trips. I couldn't just fill it out that same day. It was too emotional. There were questions they asked you, and you weren't ready to answer it. I had to come back again." The formality and bureaucratic structure of the application and hearing process have caused Murray to relive his traumatic experiences of abuse and to face his past for the first time

since his childhood⁸. For Murray, sharing his testimony meant that he was required to submit all of it to the adjudicator in a single day of the hearing or risk having his claim denied:

The hearing itself took me 11 hours because it was very emotional, and when you talk about what happened to you, who abused you, and when you come to sexual parts, sexual abuse, it's very hard. And I broke down a few times talking about it. It's never easy to talk about stuff like that. It wasn't easy.

For Murray, the consequences of reliving his abuse were far reaching and profound. After participating in the compensation process, he was never the same again: “it actually hurt me. It hurt me emotionally. I couldn't think normally anymore.”

My dissertation also explores how survivors are established as legal subject and as legal property of the IAP whose testimony must be protected from interference by unauthorized parties. During his compensation hearing, Murray struggled to receive health and cultural support because neither his counsellor nor Elder was permitted to interact with him during the hearing, presumably to preserve the integrity of his testimony: “[my counselor] was not allowed to speak. The Elder was only allowed to do the smudging at the beginning. He was not allowed to stay.” The only person at the hearing who was allowed to speak with Murray was the adjudicator: “he was the only one who was allowed to speak to me. And nobody else was allowed to speak during the hearing. Just me and him.” The power invested in the adjudicator allowed him to prioritize the legal requirements of the hearing over Murray's wellbeing and healthcare needs. For Murray, the lack of support at the hearing translated into revictimization and contributed to the emotional hardship he experienced for many years to come.

⁸ I return to the discussion of bureaucratic and symbolic violence of the IAP in Chapter 5.

1.4 Organization of chapters

My dissertation contains eight chapters. Chapter 2 outlines the theoretical framework that brings together insights from settler colonial studies, critical victimology, social constructivism, and reparations. The objective of this chapter is to develop a set of theoretical tools for investigating financial compensation for settler colonial violence. It theorizes settler colonialism and its constitutive elements, as well as anti-colonial responses to settler colonialism. Central to my theoretical framework is the focus on power that structures the relations between the administrators of a reparations process and victims. It includes a theorization of individual reparations and problematizes their use as modalities of redress for violence in ongoing settler colonialism. It mobilizes a critical victimological lens to approach individual reparations as both a structuring and structured process. In particular, individual reparations structure the experiences of victims by engaging in discursive representations of violations and corresponding harm, while at the same time they are simultaneously structured by victims' agency.

Chapter 3 outlines the methodology and research design of my dissertation project. It incorporates an approach that mobilizes elements of Indigenous and Western research methodologies to answer my research questions. I draw on Indigenous epistemologies and ontologies with the objective to learn about Indigenous experiences, realities, and worldviews. My methodology utilizes a qualitative case study design that incorporates two main data sources: one is in-depth interviews with IAP stakeholders and participants, including IAP lawyers, adjudicators, health support workers, and survivors, as well as key legal documents related to the IAP. In this chapter I also outline my data analysis strategies that include critical discourse analysis and hermeneutics that I mobilize to interpret the collected data.

Chapter 4 explores the IAP as an ordering process that establishes various hierarchies that discursively shape survivors' experiences of victimization and victimhood. It examines how settler colonial power operates through the professional duties of the various IAP administrators and challenges the scope of critical victimology in a number of ways. The IAP transforms the content of the traditional categories of "ideal" victims and facilitates the emergence of a new class of victims – "difficult" victims – whose qualities do not readily comply with the prescribed narratives of victimhood and victimization. It also discusses the performative labour that the IAP stakeholders perform to prepare survivors for their hearings, which negotiates the space between survivors' "ideal" and "difficult" states. It argues that one of the hierarchies of victimization in the IAP is structured by survivors' potential to secure financial awards at their hearings. In my building my arguments I develop the term "hierarchy of legitimacy" to examine the means through which Western medical knowledge gains legitimacy while the Indigenous healing paradigm becomes subordinated. Finally, this chapter explores how the IAP constructs the "hierarchy of losses" that represents a Western method of accounting for violence and harm primarily in financial terms.

Chapter 5 examines the IAP as a settler colonial legal process that inflicts various types of violence on survivors and perpetuates settler colonial denial. The IAP inflicts temporal violence when it establishes and reinforces settler colonial temporal standards in the IAP application and hearing process. It also manages and regulates the conduct of health support workers in order to construct survivors as subjects of the settler colonial legal system. This chapter also considers how lawyers representing the Government of Canada mobilize various technical legal arguments to discredit survivors' claims of abuse and to depoliticize the intent of the Indian Residential School system. This chapter examines how the IAP constitutes a culturally

inappropriate process and reminds survivors of the domestic criminal court proceedings that further revictimize them. It concludes by exploring how the IAP establishes the credibility and reliability of survivors' claims through the expert knowledge of Western medical professionals, while simultaneously treats survivors as secondary sources of information about their experiences of abuse.

Chapter 6 analyzes the IAP compensation model (or the "compensation chart") as a discursive tool that mobilizes settler colonial power to generate representations of survivors' experiences of abuse. This chapter begins by exploring how the compensation chart transvalues abuse for financial compensation and how it prioritizes settler colonial conceptions of violence and harm, while at the same time denies survivors' subjectivities regarding what constitutes compensable abuse. This chapter also discusses how the compensation chart constructs the hierarchy of victimization that positions sexual and physical abuse as compensable violence, which individualizes and depoliticizes the totality of the Indian Residential School experience. In the final section of this chapter I examine how the compensation chart represents a discursive tool that survivors often internalize as an instrument of meaning making and interpretation of their experiences of abuse. The compensation chart functions as a tool of bureaucratic violence that structures survivors' realities and experiences in a narrow and limited manner.

The final analytical chapter, Chapter 7, re-centres survivor agency and explores how survivors stage resistance and engage in transgressive politics against settler colonial logics of the IAP. It examines the various anti-colonial strategies that survivors mobilize to re-politicize and de-individualize the IAP's approach to financial compensation and bring attention to ongoing structural settler colonial violence. Specifically, it explores the notions of Indigenous communities and relationality with respect to individualized IAP payments. Indigenous

communities play an important role in facilitating collective decision-making, knowledge keeping, and maintaining cultural traditions (Aboriginal Justice Implementation Commission 1999). Relationality, in turn, is a concept that signifies how members of Indigenous communities co-constitute each other, and incorporates elements of accountability, defines association through relationships, and honours shared knowledge (Wilson 2001b). This chapter also discusses how survivors appropriate their IAP hearings to assert their indigeneity through truth-telling, construction of counter-narratives, and refusals to participate in the IAP. It concludes by discussing the allyship and anti-colonial potential of health support workers who, despite their role in the IAP as representatives of the settler colonial order, appear to contribute to survivors' empowerment and challenge the unjust power relations in the IAP.

In Chapter 8 I draw conclusion about my dissertation's primary findings. It includes a summary of the key ideas and concepts and discusses my reflexivity as a researcher. This chapter also highlights my dissertation's contributions to the scholarship on material reparations. It outlines the limitations of my study, proposes directions for future research, and outlines several alternatives and modification to the current financial compensation model on which the IAP is based.

Chapter 2: Theoretical framework

2.1 Introduction

The objective of this chapter is to build relevant theoretical and conceptual framework that will guide my research agenda and serve as analytical tools for answering my dissertation's research questions. My dissertation's theoretical framework brings together insights from critical victimology, settler colonial studies, and social constructivism that I will use collectively as a lens through which I will view the IAP and generate an analysis of it as a modality of individual material reparations. I conceptualize individual reparations not only as responses to settler colonial violence, but also as products and extensions of institutionalized settler colonial power. My central argument is that settler colonial power operates through individual material reparations to advance the logic of elimination and assimilation by transitioning Indigenous people to liberal democratic selfhood that is founded on the principles of individual freedom, autonomy, and private property (Logan 2015; Slyomovics 2014; Wolfe 2006). In developing my argument, I adopt a particular understanding of power, which carries both discursive representational and material implications (Hardy and Thomas 2015; Foucault 1978) for victims participating in a compensation process that is designed and executed in ongoing settler colonialism.

I approach settler colonialism as an ongoing structure that operates based on a logic of elimination of the Native (Wolfe 2006) and constructs the relations of domination and oppression between the colonizer and colonized. I build on settler colonial studies literature and utilize the work of Patrick Wolfe, Glen Coulthard, Lorenzo Veracini, and John Collins to position power as a central feature of the settler colonial enterprise that dispossesses, marginalizes, and

subjugates the colonized. This approach mobilizes settler colonial scholarship to critically examine individual material reparations and financial compensation as instruments of redress for violence under settler colonialism for their complicity in individualizing and depoliticizing violence, reinforcing the settler colonial status quo, and constructing violence as discreet events rather than as manifestations of ongoing and unjust social order.

My theoretical inquiry combines insights from settler colonial studies with critical victimological scholarship, which lends itself to exposing structural power of law that constructs and regulates access to victim status. Critical victimology presents a valuable theoretical resource for articulating the social labour and performativity of key actors in a reparations process who are authorized to engage in discursive representations of experiences and realities of victims. Specifically, critical victimological theory can be used to examine individual material reparations, to investigate the role of power in defining the parameters of victim status, and to explore the social construction of narratives of victimization and victimhood. Critical victimology could be employed to examine how settler colonial power functions through the performative labour of administrators and stakeholders of individual material reparations in settler colonialism, who often represent a network of actors or “gatekeepers” of victim status (McEvoy and McConnachie 2012; Moffett 2014; Madlingozi 2014). Specifically, what tools do these actors draw on to define the parameters of victimization and victimhood? I suggest that their constitutive power is enabled through a variety of discursive practices that they have at their disposal to interpellate victims with a particular set of characteristics that operate together to create representations of “typical” or “ideal” victims (Walklate 2007) who represent the reparations program’s intended recipients.

In my discussion of settler colonialism I also theorize anti-colonial responses that the colonized may mobilize as a basis for resisting, contesting, exposing and structural violence. To theorize resistance and contestation I draw primarily on the work of Jacques Rancière and Glen Coulthard to develop a set of theoretical tools through which agency of the colonized may be explored. Anti-colonial scholarship lends itself to analyzing resistance strategies that Indigenous people may mobilize to appropriate and transform individual reparations in order to bring attention to ongoing settler colonial violence. Anti-colonialism may also highlight the ways in which victims may “speak back” or otherwise exercise agency by strategically mobilizing counter-discourses and counter-narratives that resist the officially sanctioned discourses of victimization and victimhood and contest unjust power relations.

2.2 Theorizing settler colonialism and anti-colonial responses

I broadly theorize settler colonialism as a system of oppression and domination that operates on the basis of exploitation, violence, and elimination of the colonized. Building on the widely researched assertion in the settler colonial studies literature that settler colonialism is an imposed and dominating order (Dei 2006), I advance a framework for theorizing settler colonialism that directly engages the question of power, which is at the centre of relations between the colonizer and colonized.

One way to approach settler colonialism is to consider it as a structuring order imbued with “interrelated discursive and nondiscursive facets of economic, gendered, racial, and state power” that it holds over the colonized (Coulthard 2014:6-7). The ultimate objective of settler colonialism is to access and appropriate Indigenous territories for the purpose of capitalist accumulation, which inevitably results in material dispossession for the colonized. This

argument certainly is not new. In fact, settler colonial studies scholars like Lorenzo Veracini (2010; 2013) have developed accounts of settler colonialism that incorporate elements of Marxist capitalism to theorize settler colonial accumulation and exploitation. Notwithstanding the value of such an argument, I suggest that by theorizing colonialism based purely in relation to economic exploitation, this approach ignores its conflicting objectives that, on the one hand, include domination, marginalization, and subjugation through *exploitation*, but also seeks to destroy cultural, political, and legal systems of the colonized through elimination by *assimilation*, on the other. Theoretical inquiries of Patrick Wolfe and Canadian Indigenous scholar Glen Coulthard, which I discuss next, play an important role in refining and adapting theoretical elements of exploitation and elimination to settler colonial circumstances.

Coulthard's approach to settler colonial power theorizes domination through "the asymmetrical exchange of mediated forms of state recognition and accommodation" (Coulthard 2014:15). In particular, Coulthard draws on Frantz Fanon to argue that in settler colonialism the relationship is one of non-recognition or misrecognition where the master (colonizer) governs and manages the slave (colonized). For Fanon, the colonizer requires the slave's labour and resources, and through the oppressive relationship preserving the settler colonial status quo. However, this analogy of master/colonizer and slave/colonized is not entirely accurate because, as Patrick Wolfe aptly observes, in the eyes of settlers, Indigenous peoples *are* dispensable and settlers are not interested in the labour of Indigenous peoples, but rather in their *replacement*: "settler-colonization is at base a winner-take-all project whose dominant feature is not exploitation but replacement" (Wolfe 1999:176), which signals elimination. Wolfe, in effect, suggests that settler colonialism is a system that operates based on "a logic of elimination" of a group with the goal to secure access to territory (Wolfe 2006) that is coupled with measures of

exclusion to “deny the identity of the colonized,” to subvert their resistance, and to maintain access to the land (Collins 2011:32).

Wolfe’s approach can be used to generate a critique of settler colonialism in relation to its objective to achieve sameness between the colonizer and colonized by absorbing the colonized into settler colonial society. Sameness is facilitated through elimination by means of settler colonial self-supersession, which is synonymous with extinguishment (Veracini 2011). In the extinguishment thesis, settler colonialism strives to replace the Indigenous order, at which point it will ultimately cease to exist as an exogenous system by transplanting itself in place of Indigenous political, legal, and cultural institutions. In Veracini’s view, self-supersession allows settler colonialism to transform itself into a naturalized polity, which reproduces sameness through the process of settling. This claim is exemplified in the assimilationist mandate of the Indian Residential Schools designed to “absorb Native children into the body politic, until there would be no Indian question” (McKegney 2007:85). The elimination of the colonized upholds the principle of difference-blindness and constructs Indigenous peoples as liberal rights holders and autonomous actors (Alfred and Corntassel 2005; Alfred 1999) by implanting liberal ideals and values in place of traditional Indigenous cultural and economic systems (Coulthard 2007:452).

The tensions between Coulthard’s and Wolfe’s arguments offer insights into contributions of the politics of settler colonial recognition and the logic of elimination in theorizing settler colonialism. Settler colonialism operates by transitioning Indigenous people to liberal subjecthood and citizenship that are defined by capitalist exploitation. In other words, settler colonialism embodies contradictory principles that seeks simultaneously to absorb Indigenous people through assimilation *and* to assign them “limited forms of recognition and

accommodation” that do not contest the terms of settler colonial dispossession rooted in domination and oppression (Coulthard 2014:42). A politics of recognition the settler colonial state bestows on Indigenous subjects “reproduce[s] the very configurations of colonial power that Indigenous peoples’ demands for recognition have historically sought to transcend” and typically include concessions such as land claims, self-governance, economic development initiatives (Coulthard 2007:439), and accommodation of Indigenous interests extends only so far as they do not challenge the settler colonial status quo (Povinelli 2002).

Settler colonialism operates through a duality of conditions that encompass objective and institutionalized means of Marxist capitalist exploitation, as well as subjective, “psycho-affective,” and attitudinal dimensions of colonial power that force the colonized to internalize the relations of oppression and domination, almost in a Foucauldian sense (Coulthard 2007; Foucault 1982). Coulthard’s concept of “colonized subjects,” which he develops by drawing on Frantz Fanon’s (2005; 1967) critique of settler colonialism, is particularly relevant because it enables settler colonial structures to establish and maintain domination and oppression. Not only does settler colonialism maintain its domination through the minds of the oppressed, but it also positions colonized subjects as a means through which it reproduces itself, or as Patricia Hill Collins (2000:227) reminds us, establishes systems of oppression that “annex the power as energy of those on the bottom for its own ends.” A theorization of settler colonialism that takes into account its material and discursive logics must inevitably consider their mutually reinforcing functions that define and manage the subjectivities and realities of the colonized, as well as the effects of objective material settler colonial structures.

2.2.1 Settler colonialism and its logics

I build on the work of John Collins on settler colonial logics to extend Patrick Wolfe's thesis on the elimination of the Native. Collins argues that settler colonialism also operates through several logics, including the *logic of expansion*, which operates through "frontier" violence, and further conquest of the colonized, the *logic of exceptionalism*, also known as the "frontier thesis," that elevates the settler colonizer to a special and unique status by positioning colonization not only as a righteous, "daring, necessary, or even altruistic undertaking" (Collins 2011:34). Not only is the settler colonial project rendered exceptional, but it is also "liberating, rational and progressive" (Winter 2014:79), and operates in conjunction with the *logic of denial* that is made visible when settlers disregard the past and ongoing consequences of colonization. As Lorenzo Veracini observes, settler colonialism "covers its tracks" (Veracini 2013:325), simultaneously concealing the history of colonization and naturalizing itself as a new order. The logic of exceptionalism, or as I argue drawing on the work of Elizabeth Furniss (1995) – the *logic of benevolence* – is readily visible in the mandate of the Indian Residential Schools that sought to "kill the Indian to save the child" (Nock 1988:4).

It appears that the logics of exceptionalism, denial, and benevolence render the colonized people as "Others" in relation to the colonizers, who are automatically and unquestionably assigned the status of "exalted subjects," and such status operates as part and parcel of settler colonial privilege and denies the history of settler colonization and associated violence (Thobani 2007; Collins 2011). The process of elimination is structured, in part, by "othering," where the relationship between settlers and Indigenous populations is characterized not only by conquest and disavowal of Indigenous presence (and establishment of a new political order), but also by how it re-establishes and re-defines the parameters of settler society in relation to the Indigenous

population, much like the Occident defines itself in opposition to the Orient (Mamdani 1998a; Said 1985). The binary opposition is structured by the unequal power relations between the colonizer and colonized that “seek continually to fortify its legitimacy by marginalizing indigenous claims” (Balint, Evans and McMillan 2014:203). The relations between the colonizer and colonized result in a contradiction that, on one hand, disavows the presence of the Native (elimination by assimilation), yet on the other, calls the Native into existence. As Albert Memmi (1965:66) reminds us, “without the colonized, the colony would no longer have any meaning.” In this view, the Native exists in a precarious space defined simultaneously by destruction and continued existence, which invokes indigeneity only to distinguish itself from the originating country and to “express its difference” (Wolfe 2006:389).

2.2.2 Anti-colonial responses to settler colonialism

In response to settler colonial violence, anti-colonial theory centres on the epistemologies of the oppressed as tools of empowerment and resistance. While settler colonialism that seeks to erase the traces of its presence by transforming itself into a naturalized order that inflicts ongoing and structural violence, anti-colonialism resists such closure by exposing the range of injustices settler colonialism inflicts on Indigenous peoples, preventing settler colonialism from achieving self-supersession by “covering its tracks” (Veracini 2013:325). It also compels settlers who engage in settler colonial denial and “view no evidence of colonization” (Collins 2011:35) to re-think the everyday realities of the colonized. A strong anti-colonial approach would inevitably focus on multiple sources of power and investigate “how these relations of power work to establish dominant-subordinate connections” (Simmons and Dei 2012:75). Further, an anti-colonial framework could benefit from Alan Lawson’s (1995:160) argument that anti-

colonialism requires strategies that make visible and de-naturalize the settler colonial order that seeks to “replace the indigenous and in doing so conceal its participation in colonization by nominating a new colonized subject – the colonizer or invader-settler.”

In my discussion of anti-colonialism the work of a French philosopher Jacques Rancière is particularly relevant. Rancière has written extensively on disagreement and dissensus, which represent tools that can be used to frame resistance strategies of the colonized. I draw on Rancière’s concept of the “police order” to conceptualize settler colonial violence. The police order represents a system of “distribution and legitimization” (Rancière 1999:28) that expects individuals and groups in society to act and think according to their prescribed roles (Davis 2010), and whose grammar is rooted in power which often goes unquestioned. As a modality of the police order, settler colonialism builds false consensus and privileges certain types of violence over others. When settler colonial violence is constructed in such a manner, it operates as a vehicle of exclusion that marginalizes groups who fall outside the prescribed parameters and “who have no claim to contribute to the public discussion and debate, those who are, from the perspective of the police order, invisible” (May 2009:112). In effect, their claims to justice do not count because they represent “those who have no part” in the political order (Rancière 1999:38).

Rancière’s analysis can be applied to examine how the colonized engage in transgressive politics through strategies of political subjectivation that resist the police order and constitute themselves as political subjects (Davis 2010). Oliver Davis draws on Rancière to formulate several strategies of subjectivation, but the strategy that is the most relevant to my analysis is “theatrical dramatization,” which involves performative action aimed at constituting the speaker as a political subject demanding recognition (Rancière 1999). Theatrical dramatization transforms the space in which a previously invisible subject finds political existence by

interpellating it with discourses that challenge the hegemony of the police order. At this point, I would like to combine Rancière's concept of theatrical dramatization with Glen Coulthard's idea of strategic desubjectification (Coulthard 2007), which constitutes a process whereby the colonized empower themselves through "self-affirmative and self-transformative ethics" (Coulthard 2014:48) and assert their Indigeneity against settler colonial domination. Strategic desubjectification is characterized by struggle, however individualized, against the domination and oppression that is aimed at self-recognition and challenging the unjust power relations. In the process of desubjectification and self-affirmation, anti-colonial epistemologies and ontologies privilege Indigenous realities in exposing settler colonial violence and serve as a medium for expression of the voices of the colonized whose resistance strategies "assert [their] presence in the face of erasure" (Justice 2008:150).

An anti-colonial approach that combines the elements of theatrical dramatization and strategic desubjectification yields a set of conceptual tools to analyze resistance strategies of the colonized that contest settler colonial denial and compel the colonizer to count their suffering as both legitimate and worthy of attention. While strategic desubjectification is concerned with freeing an individual's identity and subjectivity from psycho-existential domination and oppression, theatrical dramatization politicizes the experiences of the colonized and adds a performative dimension. The two concepts link the subjectivities of the colonized with structural domination and expose "the interplay between structure and subjectivity that sustain colonial relations over time" (Coulthard 2014:140).

2.3 Individual material reparations and settler colonialism

Before considering the theoretical implications of settler colonialism on reparations, it is worth first conceptualizing their design and purpose. Reparations are responses to human rights violations that operate within a limited timeframe (Jung 2011) and make attempts to draw the line between an abusive past and a “future rights-respecting regime” (de Greiff 2012:55). Reparations programs often provide material and non-material benefits to victims. Material reparations often consist of “service packages” that act as redistributive measures that provide economic resources, such as education and health care, to victims and their communities, while financial compensation programs in the form of cash payments issued directly to victims of atrocities (Verdeja 2006). Their proponents argue that they materially acknowledge the impact of violence, recognize the uniqueness of circumstances of victims and survivors, and usually involve personalized approaches to assessing “material and moral damages” (de Greiff 2006:455; van Boven 2009). Some stated advantages of individual reparations include their potential to restore victims’ dignity, to acknowledge the uniqueness of victims’ circumstances, and to develop personalized approaches to evaluating the consequences of violence and associated harm (Verdeja 2006). Individual reparations require precise identification of each victim who has suffered human rights violations and subsequent accounting of the damages (Margarrell 2007). Financial compensation programs constitute the most common modalities of individual material reparations, and often consist of one-time, lump-sum payments or periodic pensions issued directly to victims (Roht-Arriaza 2014).

Financial compensation programs are based on individual assessments of “material and moral damages” (de Greiff 2006:455). One defining feature of individual financial compensation is that it transforms – or converts – material and intangible losses into calculable monetary

damages (Posner and Vermeule 2003). Material losses generally signify economic aspect of injuries and often include consequences of violence that caused damage to or destruction of victims' personal property. Intangible losses, in contrast, represent non-material damages that often include loss of life and psychological trauma (Verdeja 2006). One stated advantage of financial compensation is that it provides something concrete and immediate to recipients and may assist victims with improving their quality of life in the aftermath of atrocities (de Greiff 2006; Johnstone and Quirk 2012).

Although the primary purpose of financial compensation is to transform – or convert – material and non-material damages into calculable compensation payments (Posner and Vermeule 2003), it is often theorized in symbolic terms: the act of offering money to victims bears significance in relation to what it represents, it is an acknowledgment of the harm done by a wrongful act (Moon 2012). The symbolic view of financial compensation seeks to avoid the dilemma of commensurability of damages with money, which emerges when violent acts and associated injuries transcend calculation, itemization, and quantification, or altogether exceed the amount of allowable compensation (Satz 2007). In other words, the symbolic perspective on financial compensation programs suggests that they will not invite “either their designers or their beneficiaries to interpret them as an effort to put a price on the life of victims or on the experiences of horror” (de Greiff 2006:465-66).

2.3.1 Problematizing individual reparations for settler colonial violence

In the settler colonial context, reparations constitute mechanisms of official state redress that simultaneously represent responses to and products of the settler colonial order. How does settler colonialism complexify reparative responses to the violence it produces? I build on Glen

Coulthard's insights to theorize financial compensation as a modality of reparations embedded in settler colonial power relations that advances a particular politics of recognition. It solidifies and maintains the subordinate position of the colonized, interpellates the structural/objective conditions of Indigenous collectivities, and structures the "relations of recognition [as] constitutive of subjectivity" (Coulthard 2007:453). Indeed, as Woolford (2010:138) reminds us, responses to settler colonial violence, including reparations, act as constitutive events "through which new societal visions and subjectivities are constructed and performed."

Individual reparations for settler colonial violence are problematic in several ways. First is that they individualize structural violence and its effects. By targeting only direct victims of violations, and in some cases their families, they often fail to account for the collective impact of violence. As a modality of individual material reparations, financial compensation tends to approach harm purely in psychological terms, which is what John Torpey refers to as the "triumph of the therapeutic" (Torpey 2006:48). In doing so, reparations shift the focus away from the unjust institutional structures that generate ongoing violence to the physical and psychological aftermath of the violence. What is problematic about this type of "pacifying discourse" is that when it is deployed as a modality of settler colonial redress, it situates "Indigenous subjects [as] the primary object of repair, not the colonial relationship" (Coulthard 2014:127).

Second, individual reparations purport to achieve closure by drawing the line between the past and present, whereas settler colonialism represents a structure rather than an event (Wolfe 2006) that requires recognition of its ongoing presence, including "ongoing multigenerational processes of dispossession and oppression" (Alfred 2009a:50). Indeed, the dominant discourses on reparations appear to be blind to the ongoing settler colonial violence and scholars often tend

to treat settler colonialism as a finished project (see, for example, Torpey 2006; Cunneen 2005; Butt 2012). This view also presents settler colonial violence exclusively in terms of acute, visible, and extraordinary violence and “does not address the roots of Indigenous survivor suffering,” such as territorial dispossession (Corntassel, Chaw-win-is and T’lakwadzi 2009:152). The issue here is that reparations require the presence of a restrictive principle (Teitel 2000), such as a harmful event, which can then be categorized as an “act of historical injustice” (Johnstone and Quirk 2012:164). The justiciable event, in effect, becomes a *synecdoche* of systemic settler colonial violence, which is a process where a part comes to represent the whole (Henderson 2013). As Jennifer Henderson argues in relation to Indian Residential School abuse, “financial reparations for residential schooling can be individualized and contained in a way that land claims cannot” (Henderson 2013:67), thereby making Indian Residential School violence intelligible, readily “apologizable,” and suitable for repair (see also Tavuchis 1991). To this end, settler colonialism complicates reparative responses because they are designed for atrocities that have ended, whereas settler colonialism continues to produce new classes of victims through structural *and* acute/visible violence (Lawrence and Dua 2005). To this end, reparations wrongly separate past and present settler colonial violence, when the two are, in fact, mutually sustaining. As Leanne Simpson explains, official measures of state redress induce untimely closure because once “the historical ‘wrong’ has been ‘righted’...further transformation is not needed” (Simpson 2011:22). As such, reparations inflict symbolic violence, which is a subtle form of violence of “the everyday bureaucratic processes and practices that serve to reinforce colonial power relations” (Regan 2010:116).

Third, reparations may be complicit in reinforcing the settler colonial status quo by resisting transformative change. As Susan Slyomovics (2014:267) reminds us, reparations may

“rationalize ongoing settler colonialism through the colonizer’s compensations that reinforce the lowly place of the colonized in the social hierarchy.” Through this process, reparations simultaneously condemn the violence and affirm the superiority of the colonizer. As a modality of settler colonial order, reparations may reproduce the unjust power relations between the colonizer and colonized and facilitate the elimination of the colonized. In other words, reparations may contribute to settler colonial self-supersession that “erases the distinction between colony and metropole” thereby rendering itself a naturalized, invisible order that is concerned with authentication of indigeneity and its simultaneous erasure (Veracini 2011:3). Furthermore, reparations programs are often crafted based on liberal democratic ideals that privilege individual rights, individual autonomy, and private property, all of which represent elements that can be harmful to the interests of Indigenous peoples as they incorporate “*asymmetrical and nonreciprocal* forms of recognition either imposed on or granted to them by the settler state and society” (Coulthard 2014:25, emphasis in original).

Indigenous scholars and activists Taiaiake Alfred and Glen Coulthard are skeptical of financial compensation as a modality of individual material reparations for settler colonial violence because it is the restitution of Indigenous lands that should be the ultimate objective of decolonization. Financial compensation obscures the scope of injustice because it inappropriately compartmentalizes violence into “small monetary payoffs of those remaining individuals who endured abuse in the Indian Residential Schools do not come close to true acknowledgement, much less moral, legal, or political absolution for the much larger crime of dispossession of an entire land mass” (Alfred 2009b:186). On the one hand, it may be easy to agree with the insight that an individual financial compensation process that distributes cash to victims in strict proportion may not be entirely appropriate in the context of ongoing settler colonial violence

because they individualize injustice, depoliticize, and conceal the magnitude of the atrocities. On the other hand, Alfred's argumentation does not readily account for agency of participants of a financial compensation process who may appropriate it as a process that brings attention to structural violence (Jung 2011), even as the design of such a process may be viewed as an attempt to prematurely end the government's obligations to the victims (Moon 2012).

2.4 Critical victimology, reparations, and settler colonialism

Critical victimology contributes to my theoretical framework by problematizing the taken-for-granted category of "victim" in reparations and locates social labour and performativity as constitutive elements of victim status. By social labour and performativity of reparations I refer to the official processes that actively constitute and discursively representing the experiences of those who suffered injustice and endured harm, as well as define the parameters of victimization and victimhood. I draw on critical victimological scholarship to develop a set of theoretical tools to examine the social construction of individual material reparations, how stakeholders in a compensation process constitute its participants, and how victims constitute themselves. Critical victimology is a valuable theoretical resource for my analysis because it interrogates the power relations that regulate the acquisition of victim status and how unjust acts against victims come to be defined as such.

The discipline of critical victimology concerns itself with how victim status is constructed, how it is applied to those who suffered injustice, and "who has the power to apply the label and what considerations are significant in that determination" (Miers 1990:224). Critical victimology is a relatively new discipline that emerged in the early 1990s in response to the inability of traditional (positivist) victimology to account for the ideologies and political

agendas that regulate access to victim status, and challenges the neutrality of the victim label. Its research program can be traced back to the feminist movement and feminist legal research whose aim is to interrogate the “objectivity” of the law and to expose the patriarchal nature of the state.

One way to approach critical victimology is to think of it in terms of a theoretical approach that “problematizes both the law and the role of the state” by considering the “construction of everyday reality...the generative mechanisms which underpin daily life” (Mawby and Walklate 1994:19-20). In other words, critical victimology engages in the analysis of the broader social, political, and cultural structures that enable the recognition of certain actions as criminal and designate others as lawful. To conceptualize victimization and victimhood, critical victimological inquiry “challenges the use of the term ‘victim’ and the circumstances under which such a term may be applicable” (Walklate 2007:50).

Theoretical tools from critical victimological scholarship are particularly suitable for investigating reparations in the settler colonial context because critical victimology and settler colonial studies share similar views on power and position it as a central analytical tool. Critical victimology highlights the means through which some victims are assigned victim status and are thus constituted as “legitimate” victims who deserve justice, while others are ignored or rejected by the system. The social constructivist elements of critical victimology represent valuable tools for theorizing reparations as products and responses to settler colonial violence. They approach reparations as modalities of the settler colonial order by considering the key actors, including reparations managers and administrators, who have the power to define the boundaries of victimization and victimhood.

In my assessment of critical victimology I am specifically interested in learning how settler colonial administrators assign victim status and how victims constitute their own statuses in relation to reparations. After all, victim status is something that can be achieved through performativity; it is socially, culturally, legally, and politically constructed; and it is associated with innocence, suffering, purity, and moral superiority (Smyth 2003; Bouris 2007; Walklate 2007). In other words, victim status is a product of what McGarry and Walklate (2015) refer to as the “politics of victimhood” that dictate the process of acquisition of victim status and its official recognition. Of particular interest to me are Rainer Strobl’s (2010:6) concepts of “designated victim” (a person who does not consider him or herself a victim, yet is recognized as such by others) and “rejected victim” (a person who considers him or herself a victim, yet not recognized as such by others) because they represent an external regulation of victim status that might be in conflict with victims’ own subjectivities.

Critical victimology’s focus on power positions it as a valuable tool for exploring how powerful administrators of a reparations program participate in regulating access to victim status, how they engage the various logics of settler colonialism, and what strategies they use to advance a particular politics of recognition and accommodation. The insights of Mahmood Mamdani are relevant for exploring how reparations in the settler colonial context embody “power [that is] undergirded by a particular system of privilege” (Mamdani 1998b:14). Settler colonial privilege endows reparations administrators with unquestionable and automatic authority to regulate and sanction access to victim status and explore how these actors “sought the victim out, categorized her, defined her, theorized her, packaged her, and disseminated her on the world stage” (Madlingozi 2010:211).

My focus will be on the performative functions of reparations, which require the presence of powerful actors, including professionals and experts, who engage in discursive representations, interpretation, and re-interpretation of discourses of victimization and victimhood. These actors represent “status-coaches” (Rock 2002:18) who regulate the realm of the sayable, justiciable, and compensable (Madlingozi 2010:213). They offer victims a variety of social scripts as a means of learning the appropriate ways of “acting like a victim” and thus regulate access to victim status by inviting victims to participate in a process in which “*power* and *choice* are in fact being exercised in the construction of victim voices” (McEvoy and McConnachie 2013:497, *emphasis in original*). Not only that, but reparations administrators engage in strategies that may “steal the pain” of victims (Razack 2007:376), which is a process through which power establishes victims as dehumanized, silenced, and disempowered groups through the colonizer’s empathy and compassion. These “transitional justice entrepreneurs” (Madlingozi 2010) may also silence the voices of victims by speaking for them or on their behalf and by discursively representing their experiences in a particular manner (Alcoff 1991-1992), which could potentially result in framing “some kinds of pain [as] more visible while displacing other forms of experience and its expression” (Ross 2003:163). What is problematic about these transitional justice entrepreneurs or “third-party enablers” (Pupavac 2004) is that their work may “reinforce [their] status as the authoritative knowers who [are] ordained to teach, civilize and rescue the benighted, hapless victim” (Madlingozi 2010:211). In this process, the entrepreneur is established as a powerful agent who holds expert knowledge about victims, while the victim is transfigured as someone who requires rescue and salvation, which only contributes to the victim’s powerlessness (Mutua 2001).

The work of Georg Simmel (1971) on the social construction of reality and a study by Bowker and Star (2000) on classification, categorization, and standardization is relevant for exploring how victims' experiences can be packaged and channeled into socially constructed categories that represent products of competing discourses and power dynamics that reflect settler colonial relations between the colonizer and colonized. These discourses define the parameters of victimization and victimhood, dictate what injustices and harms are compensable, and limit or enable the types of claims victims are able to advance. Narratives that do not neatly fit into the appropriate political discourses or categories (such as reconciliation) are ignored or completely disregarded. Critical victimological concept of the "hierarchy of victimization" (Carrabine et al. 2004) is particularly useful here as it presents a lens for investigating how some victims are constituted as deserving or legitimate while others are denied access to victim status. Viewed through this lens, victim status represents a social practice and undergoes a process of signification (Miers 1990) that is "built up step by step, over time, prompted by professionals and lay people engaged in the processing of crime... embellished by readings provided by relatives, friends and the occasional fellow survivor" (Rock 2002:17). In effect, victim status in its traditional form requires the embodiment of a variety of characteristics that, in addition to powerlessness and helplessness, include innocence and purity, all of which comprise the concept of the "ideal victim" (Christie 1986) who often "becomes a symbol around which contested notions of past violence and suffering are constructed and reproduced" (McEvoy and McConnachie 2012:532). The Victimological Other, in contrast, represent the "unlikely" victim whose experiences of victimization do not conform to the conventional discourses on victimization (Walklate 2007).

Interestingly, Indigenous peoples occupy a special place in discourses of victimization and victimhood because they are often considered “weak, powerless, prone to laziness, and unable on his own to create the conditions for his development,” while settlers are simultaneously constructed as superior, civilized, and progressive (Mutua 2001:232). Jennifer Henderson’s (2013) concept of the “deserving child” may provide insight into official processes of settler colonial redress that tend to construct Indian Residential School students as vulnerable, innocent, and “socially unmarked” persons, but who are also liberal subjects endowed with universality of selfhood and “developmental, entrepreneurial potential” (Henderson 2013:70, 76). Henderson’s contribution to my critical victimological framework is that her observations introduce complexity into how victim status is constructed and raise questions in relation to the type of victim who is traditionally recognized as deserving. With Henderson’s insights, I augment the qualities of the ideal victim in traditional critical victimology that portray them as innocent, “weak, sick, old or very young...[and] physically harmed by a big and bad offender” (Strobl 2004:298) with liberal qualities including fiscal responsibility, self-sufficiency, and contribution to the economy.

What is often missing from critical victimology scholarship is a theorization of the wrongdoer/perpetrator of violence, or “complex” victims (Moffett 2014). Participants of reparations programs who are both victims *and* perpetrators require a re-conceptualization of the “ideal victim” and “deserving victim” categories. As McEvoy and McConnachie remind us, constructions of the deserving victim “become an easy shorthand for *blaming* those deemed responsible for past horrors,” where the guilty perpetrator is constituted in opposition to the innocent victims (McEvoy and McConnachie 2012:533, emphasis in original). The focus on the

immediate and *direct* “complex” victims may also obscure or exonerate the institutional perpetrators who created the conditions that made the violence possible.

The complexity of victim status requires the consideration not only of the types of violence that these victims suffered, but also the impact of the wrongful acts on their victim status. This theorization is particularly relevant in the settler colonial context where perpetrators may be “a product of violence [and] reproduce the structures of violence” (Baines 2009:181). A critical victimological approach to studying violence in the settler colonial context would problematize the concepts “complex victim” and “hierarchy of victimization” that are often found in the critical victimology and reparations literature. Luke Moffett’s insights on victim status is valuable insofar as reparations may construct the hierarchy of victimization on settler colonial terms and constitutes a process that prioritizes a particular type of victim who is “‘innocent’ or ‘real’...to facilitate political narratives of blame and innocence during the conflict” (Moffett 2014:10). Critical victimological analysis that centres on the complexity of victim status in relation to the hierarchy of victimization would examine how victims must not only present themselves innocent and deserving, but also fulfil the expectation that the “good” victims fully cooperate and comply with the prescribed narratives of a reparations program and accept the power of authorities over them. “Difficult” victims, in contrast, will face challenges in generating the recognition of their victim status because they do not readily comply with the socially, culturally, and politically accepted attributes of the “ideal” victim (McGarry and Walklate 2015; Carrabine et al. 2004; Rock 2002).

Critical victimology also lends itself to exploring how victims contest, reject, and expand the range of officially-sanctioned meanings their victim statuses embody. I am interested in the ways that victims mobilize individual reparations in the settler colonial context as decolonizing

moments that challenge settler colonial structures, resist settler colonial logics, and contest the liberal politics of recognition and accommodation. Claire Moon's research on refusal of reparations is relevant in considering victim agency and practices of resistance for two reasons. First, it centres on the contestation of victim status that takes place when a powerful actor – the state – attempts to regulate and control the narratives around violence inflicted on the victims, “consigns horror to historical memory,” and pacifies debates about justice in the present (Moon 2012:197). Although Moon's case study focuses on Argentina's Dirty War that was characterized by acute and visible violence and marked by a distinct beginning and end, I suggest that reparations in the settler colonial context may operate in a similar fashion, where powerful groups control and regulate the meaning attached to reparations (Jung 2011). Second, Moon's insights are valuable because they can be mobilized to explore how victims' subjectivities, realities, and experiences have given rise to a series of debates over the official “historical, social and political” meaning of reparations and, specifically, how some reparations recipients may choose to resist the state-sponsored definitions of victimisation and victimhood by rejecting reparations (Moon 2012:190).

To stage resistance to reparations in a settler colonial context, Indigenous people may engage several strategies. They may mobilize their participation in reparations processes to critique them as a “politics of distraction” that obscures repair for settler colonial violence (Corntassel and Holder 2008; Woolford 2010). They may also harness reparations to prevent settler colonial self-supersession, and to bring attention to the issues extending beyond the acute and visible injustice for which reparations are issued in order to illustrate the continuity between past and present settler colonial violence. Courtney Jung (2011:231) observes that Indigenous groups, including leaders and activists, may mobilize reparations for historical injustice “as a

way to critique the present” and to highlight the continuity of the settler colonial violence.

Victims may also transform reparations processes into strategic spaces for advancing outstanding justice demands associated with settler colonial violence and putting forward claims for recognition of the “social, political, economic and legal frameworks...that underlie settler colonialism” (Balint, Evans and McMillan 2014:214). Jung’s insights that Indigenous populations may harness reparations to achieve a particular set of objectives resonate particularly well with Glen Coulthard’s argument that resistance strategies would contribute to active reclamation of Indigenous peoples’ “*own* histories, traditions, and cultures against the subjectifying gaze and assimilative lure of colonial recognition” (Coulthard 2007:453, emphasis in original). These contestations of dominant narratives of history take place when the marginalized voices are “brought to the centre...[and expose] new truths about the past” (Kempf 2009:27-28).

2.5 Conclusion

In this chapter I developed a set of theoretical tools that I will mobilize in my analysis of the IAP. I theorized settler colonialism as an ongoing system of domination and oppression that strives toward self-supersession and is premised on the logic of elimination of the Native (Wolfe 2006; Veracini 2011). In addition to the logic of elimination, settler colonialism incorporates several other logics, including the logics of denial, benevolence, and exceptionalism, all of which are harmful to the interests of Indigenous people. The logic of elimination through assimilation presents a particularly interesting analytical vantage point because its objective to destroy indigenous societies it is at odds with its objective of ongoing domination and subjugation that requires the presence of the colonized. Unjust power relations between the colonizer and

colonized structure the realities of the colonized that carry material/objective, “psycho-affective,” and discursive representational consequences.

My theoretical framework draws on critical victimology to problematize individual material reparations for settler colonial violence because they individualize injuries, they are not capable of recognizing ongoing settler colonial violence, and they are complicit in maintaining the settler colonial status quo. Financial compensation programs in particular reflect narrow and limited discourses of victimization and victimhood. Critical victimology lends itself to the analysis of individual reparations for settler colonial violence by interrogating the socially constructed elements of victim status and raising questions around the power relations between the actors who design and administer reparations, on the one hand, and recipients of reparations, on the other. Critical victimology questions the role of powerful actors in the process of constructing discourses of victimization and victimhood and could be used to examine how narratives of violence are performed, represented, and interpreted. Ultimately, a critical victimological approach constitutes a valuable theoretical resource through which one could begin to consider the construction of discourses of “ideal” and “complex” victims, as well as to examine unique characteristics of settler colonialism that complexify the traditional conceptions of the hierarchy of victimization. It can also be mobilized to examine the strategies of resistance and contestations that victims may engage to challenge the hegemony of dominant discourses of reparations.

Chapter 3: Methodology

3.1 Introduction

In this chapter I outline the methodological framework, explain the ethical consideration for Indigenous participants, and formulate the research design of my dissertation. My methodological framework is inspired by an exploratory case study design that mobilizes several Indigenous and Western research methodologies. It incorporates Indigenous methodologies, such as the conversational method, and a decolonizing approach that comprise the foundations of my dissertation's knowledge production and inform my theoretical and empirical inquiry. This framework privileges Indigenous experiences, realities, and worldviews and critically evaluates the contributions of Western research practices, namely the social constructivist approach and the qualitative case study design, to my research process. I apply the case study design in a critical manner, recognizing that it is part of the Western methodological toolkit, while at the same time acknowledging its value as it constitutes a methodological tool that incorporates elements resembling Indigenous epistemologies and ontologies. The social constructivist approach is relevant for building connections between the subjectivities of survivors and the practices of meaning making they engage with the world around them.

To answer my dissertation's research questions, I have collected data from several sources, including qualitative in-depth interviews and published documents. My research populations include four primary groups: survivors⁹, Resolution Health Support Program (RHSP) workers, leaders of Indigenous advocacy groups, and lawyers and adjudicators. I organized the collected data using the NVivo qualitative software. To analyze and interpret data,

⁹ With several notable exceptions at the request of participants, I anonymized the identities of all of my research participants and assigned each of them a pseudonym based on their gender.

I engaged in hermeneutic analysis of data from Indigenous participants and critical discourse analysis of all the other interview data and published documents.

3.2 Decolonizing and Indigenous research methodologies

In recent years, there has been a significant shift toward decolonizing and anti-oppressive methodologies in research projects involving Indigenous peoples (Wilson 2001b; Kovach 2009; Denzin, Lincoln and Tuhiwai Smith 2008). This shift comes in the wake of resistance to settler colonial research projects that have historically been used to dominate and subjugate Indigenous populations (McCaslin and Breton 2008; Tuhiwai Smith 1999). Decolonization and indigenization of research methodologies requires us to consider how Indigenous epistemologies, systems of knowledge, and worldviews that are rooted in lived realities and experiences contribute to developing an understanding of issues of concern to Indigenous populations. They represent a paradigm shift in the recognition of Indigenous voices in the struggle against settler colonial domination (Rigney 1999) by privileging what once was historically silenced and discredited (Hart 2009). Decolonization challenges the hegemony of dominant Western methodological approaches (Absolon and Willett 2005) and incorporates Indigenous perspectives to “interpret the experiences of colonized peoples on their own terms” (Carlson 2016:5; see also Dei 2006).

During the course of my research I incorporated insights of Margaret Kovach (2005) and Krystal Summers (2013:3) to consider Indigenous epistemologies as “a philosophy of what counts as knowledge” and how knowledge is conceptualized. In my research encounters with Indigenous participants, I sought to create methodological, ontological, and epistemological space for Indigenous storytelling practices. My ultimate vision was to formulate an approach that

included elements of reciprocity, respect, and responsibility often found in the Indigenous research paradigm into my research practice of designing, analyzing, and interpreting findings. Such a blend of traditions, in my view, would not only challenge the hegemony of Western research methodologies, but it would also contribute to a theoretically robust project “with methodological rigor and with contextual sensitivity” (Fletcher 2003:37). This meant that my role as a researcher was to account for the idiosyncrasies of participants’ experiences in the IAP, which I sought to accomplish by adopting the social constructivist approach. I selected this approach because it is often thought to resemble Indigenous understandings of multiple realities that challenge positivist thinking that there is a single, objective truth that researchers seek to discover (Henderson 2002a; Wilson 2008). Constructivism allowed me to approach the IAP as a socially constructed phenomena and to build meaningful connections between the experiences of Indigenous participants in the IAP and their experiences as “colonized subjects” more generally (Denzin and Lincoln 2008; Coulthard 2014). In other words, the use of this method involved adopting a holistic view of the IAP that resisted a reductionist understanding of the compensation process and to challenge what Marie Battiste (2002) refers to as “cognitive imperialism” that is often found in Western research methodologies.

Many survivors chose to speak with me about their experiences of structural violence rather than directly answering my questions about the IAP. Their perspectives highlighted the holistic dimension of storytelling: their experiences of colonization *were* their truths, which reminded me that the objects that I was investigating in my dissertation – the IAP, reparations, and the Indian Residential Schools – could not be viewed in isolation and should not be divorced from their historical, political, socio-cultural, and legal settler colonial context. One experience that made my interviews with survivors particularly memorable occurred while interviewing a

female survivor in Spanish, Ontario whose IAP claim was rejected, when her husband walked into the room and politely asked if he could share his perspective with me. His narrative focused not on the IAP, but rather on the hardships that his wife faced following her years in an Indian Residential School, which prompted me realize that the answers to the questions I was asking formed only part of the participants' larger settler colonial realities and the IAP represented only a single moment they encountered within a complex range of experiences. Their responses acted as interruptions and challenges for my understanding of their experiences.

I utilized the social constructivist approach in conjunction with what Indigenous researcher Margaret Kovach (2010:40) refers to as the “conversational method” in my interviews with survivors, which positioned practices of sharing, re-storying, and re-membering¹⁰ as “a method of gathering knowledge based on oral story telling tradition congruent with an Aboriginal paradigm.” The use of this method involved semi-structured interviews with Indigenous participants that resembled conversations, discussions, and dialogues, which are often thought to reflect the principle of reciprocity often found in Indigenous methodologies (Kovach 2009; Simpson 2011). During the interviews, I made attempts to distance myself from becoming what I refer to as the “benevolent researcher” who made an effort to provide paternalistic support and at the same time confirms his superiority. Rather, through attentive listening with humility, respect, and reflexivity as an outsider (Tuhiwai Smith 1999), I began to recognize participants' struggles that not only disempowered them but also encouraged them to become agents of change. To this end, I strived to privilege survivors' knowledge by paying close attention to how they constructed their understanding and perspectives in relation to the

¹⁰ The concept of “re-membering” refers to practices of Indigenous resurgence that strive to reconnect, reclaim, and “re-search” Indigenous heritage. See Absolon, K., and C. Willett. 2004. "Aboriginal Research: Berry Picking and Hunting in the 21st Century." *First Peoples Child and Family Review* 1:5-17.

IAP and how they articulated their answers that incorporated traditional Indigenous views on justice, healing, and compensation.

One challenge I faced in employing the conversational method was that many survivors initially appeared to be uneasy with my presence even in the safe spaces that they themselves selected, and mistrust toward me as a member of white settler society was apparent in some interviews with survivors, more so with survivors who had not previously met me informally. My community contacts, Mike Cachagee and Claudette Chevrier introduced me to survivors and vouched for me, which seemed to have mitigated the feelings of apprehension and anxiety among them. During the interviews, many survivors appeared to “warm up” to me as we exchanged stories about our experiences. I shared my experiences as a graduate student and newcomer to Canada and how the Indian Residential School system was never covered in my high school curriculum. Survivors, in turn, shared their experiences that I recognized as “colonial moments” that rendered them not only vulnerable, but also as agents of social and political change. The interviews followed the format of dialogue with participants that developed into the “social relationship of the interview.” The roots of this relationship took hold when I shifted my focus from the interview guide to asking follow-up questions arising from the participants’ contextualized responses (Kvale and Brinkmann 2009:139). I considered the conversations with survivors as narratives, histories, and storytelling practices that incorporated relational content, and in this process I played an active listening role. During the course of my fieldwork, the conversational method presented a valuable tool for investigating how participants constructed, interpreted, and understood their experiences and realities, how they made sense of the world around them, and the ways that they engaged in meaning-making (Turner 2010). The use of the conversational method has also helped me to challenge the “methodological positivism” (Kvale

and Brinkmann 2009:18) and hierarchical research/subject relationships that are common in Western research methodologies (Denzin, Lincoln and Tuhiwai Smith 2008).

Admittedly, my understanding of Indigenous methodologies and decolonizing methodologies is inherently limited as I do not share the “subjectivity, history, and positionality of the colonized” (Carlson 2016:5). As a non-Indigenous scholar who was conducting research with Indigenous communities, I lacked the insider perspective that Indigenous research are often able to adopt (Tuhiwai Smith 1999). As a result, I faced methodological challenges in interpreting the experiences of the colonized and generating meaning from their lived realities, as well as developing critiques of settler colonialism (Dei 2006). After all, as a member of a settler colonial academic institution, my knowledge and experiences were structured by a particular understanding of the world and that analytical lens was structured by a settler colonial system of white privilege. Therefore, as an outsider, I recognize that the claims I am able to make in my research with Indigenous participants and in relation to Indigenous knowledges are subject to the “settler colonial power structure” (Simpson 2004:381) that is difficult to escape.

3.3 Qualitative case study design

My dissertation adopts an exploratory qualitative case study design. I follow Bruce Berg’s definition of a case study and approach it as “a method involving systematically gathering enough information about a particular person, social setting, event, or group to permit the researcher to effectively understand how the subject operates or functions” (Berg 2007:283). Specifically, I will examine the IAP as a case study of reparations for settler colonial violence inflicted on Indigenous peoples. The case study design allows me to focus on the IAP as an individual case through a range of data sources, including interviews and published material, and

to investigate how it operates in “real life” (Yin 2003). To develop a methodological framework for analyzing the IAP, I conceptualize its parameters by partially adopting Stake’s (1995) and Smith’s (1978) approaches that observe that a case study is a bounded and integrated system, or as Merriam (2007:27) stipulates, it is a “unit around which there are boundaries,” which simultaneously defines the areas of the a social process that will not be studied. With respect to the IAP, its conceptual boundaries are quite clear: it is a quasi-judicial process mandated by a court-ordered settlement.

The case study design presented a valuable methodological tool for my dissertation research for several reasons. First, the IAP is an understudied process and the case study design holds exploratory potential for studying new social phenomena and the IAP is currently chronically under-researched. Second, qualitative case study design is often thought to overlap with Indigenous ontologies and epistemologies (Kovach 2010). It reflects principles of Indigenous knowledge production by developing a social constructivist view of reality, and such design “recognizes the importance of the subjective human creation of meaning” (Crabtree and Miller 1999:10). Third, the case study design is able to account for multiple realities that each participant experiences and constructs an understanding of events in their life in relation to their social environment, and as a researcher I played an active role in interpreting these realities (Wilson 2001b). In this respect, I viewed the IAP as an object that was formed in relation to my research participants’ experiences and perceptions, and by approaching the IAP as a case study gave me insight into participants’ subjectivities.

I drew on the Indigenous research paradigm and decolonizing methodologies to critically apply the case study design and interrogate it as a construct of the Western qualitative research process and innovate its practices in two specific ways. First, I adopted Margaret Kovach’s

(2009) insights that decolonization of Western qualitative research requires researchers to account for tribal worldviews and second, I worked toward interrogating the epistemic differences that existed between Western academic institutions and Indigenous modes of knowledge production. I incorporated these elements in my analysis by recognizing and privileging Indigenous participants' views of reality and the knowledge that the marginalized voices shared with me. I did this by exploring firsthand accounts that I had received from key informants in the field, which was also one of the main methodological advantages of the case study design (Denzin and Lincoln 2011). The shared stories and experiences played a central role in my data analysis and served as a means for me to "understand the participants' actions" (Baxter and Jack 2008:545). I built on the elements of the case study design and particularly on its capacity to consider the effects of political, legal, and economic forces or structures on the case in question to examine how the IAP is both a product of and response to settler colonial violence (Stake 1995).

3.4 Ethical considerations in the data collection process

Indigenous people are often regarded as vulnerable populations because settler colonial researchers in all disciplines have historically exploited them, appropriated their knowledges, and then used them to dominate Indigenous peoples (Deloria 1991; Castellano 2004). Such unethical treatment of Indigenous knowledge systems has often undermined the empowerment and self-reliance of their communities (Ermine, Sinclair and Jeffery 2004). My research design incorporates several strategies to facilitate ethical treatment of Indigenous knowledges. It does so by means of following the First Nations Information Governance Centre's four components of ethical research: *ownership*, *control*, *access*, and *possession* to ensure just and respectful

relations with my research participants and that my research conformed to the appropriate knowledge transmission protocols as established by the participating Indigenous communities.

Indigenous participants retained the rights to the information that they have shared with me and their stories will remain their property. In my dissertation I identify connections between survivors' stories and Indigenous "heritage of knowledge" by creating tangible links of attribution between the knowledge survivors shared with me and their status as Indigenous keepers of traditional knowledge (Ermine, Sinclair and Jeffery 2004). To ensure that participants have access to and remain in possession and control of their interviews, I have (a) distributed individual interviews transcripts to their respective owners by email, regular mail, or in-person, and (b) made a collective deposition of the interview transcripts into the Ontario Indian Residential School Support Services' (OIRSS)¹¹ archives and the Shingwauk Residential School Centre located at Algoma University with participants' permission and in accordance with their choices regarding the privacy of their submissions. Through informed consent, survivors had the choice to have their interviews audio-recorded and later stored, shared, and archived. They were also able to make their stories available to whomever they choose, to make them private, or to make their individual interview transcripts communal property. I have informed all participants that I would facilitate their access to the complete project – my dissertation – in its electronic or paper format. I intend to further disseminate the collected data by presenting a summary of my dissertation's findings in the written and oral form at the annual Shingwauk Gathering and Conference, which will host local community members and guests from First Nations communities across Canada. I plan to hold informal conversations with conference attendees, solicit feedback from survivor participants, and seek additional comments from community members.

¹¹ Formerly known as the Children of Shingwauk Alumni Association.

To ensure that the participating Indigenous communities play an important part in directing the research design of my dissertation, I partnered with Indigenous community representatives to develop recruitment procedures and appropriate cultural protocols for approaching potential research participants. Health support staff at the OIRSS directed my recruitment strategies by connecting me with participants and advising me on the levels of vulnerability of each participant. OIRSS staff also volunteered to be present at the interviews with vulnerable participants and to provide health support services to them during and after my interviews, either in person or over-the-phone.

I sought to incorporate community-based research practices into my dissertation fieldwork when initiating contact with survivors who were involved in the IAP. Prior to commencing fieldwork, I received cultural training on the formal rules and oral customs that applied in the First Nations communities whose members participated in the interviews. In particular, I attended the 2015 and 2016 Shingwauk Gathering and Conference in Sault Ste. Marie, Ontario and the 2016 St. Charles and St. Joseph's Residential School Gathering where I consulted with a number of survivors, health support workers, Indigenous leaders and Elders and received their consent to establish Indigenous communities located in the vicinity of Sault Ste. Marie and Spanish, Ontario and surrounding areas as my research sites. By attending the Gatherings, I learned about many of the core values of local Indigenous communities, which included mutual respect and mutual understanding through honesty, truth, and humility. It was there that I learned about traditional Indigenous customs and protocols for interacting with potential participants. I engaged with Indigenous participants by being open and transparent about my dissertation research and by seeking participation only through free, informed and ongoing consent. When approaching Indigenous Elders, I provided honoraria consisting of

traditional tobacco offerings in recognition of their sacred wisdom and as a gesture of appreciation for sharing their stories with me.

3.5 Data sources

My dissertation's data sources include in-depth semi-structured individual interviews and published documents. I held in-person interviews with participants in various cities, towns, and Indigenous communities in the province of Ontario, including Sault Ste. Marie, Sudbury, Ottawa, Sagamok, and Spanish. I conducted telephone interviews with participants in the provinces of British Columbia, Alberta, Saskatchewan, and Manitoba. To complement the interview data, I also gathered data from published sources consisting of primary and secondary documents.

3.5.1 Interviews

I held interviews with four primary groups of participants: (1) Indian Residential School survivors who had participated, attempted to participate, or refused to participate in the IAP hearings; (2) Health Canada's Resolution Health Support Program (RHSP) workers, who included counselors and cultural support workers (Elders); (3) leaders of Indigenous advocacy organizations; and (4) IAP lawyers and adjudicators. I audio recorded the interviews with the participants' permission and transcribed them manually.

In total, I interviewed fifteen survivors who participated in the IAP hearings, opted out of IAP, or had their claims rejected. My primary objective in conducting these interviews was to access survivors' interpretations of their experiences in the IAP and the ways they engaged in meaning-making in relation to the IAP, as well as to explore the IAP as a structuring and

structured process. Specifically, I was interested in learning about discourses of victimization and victimhood through which particular representations of claimants were constructed (by awarding or denying compensation) and how survivors mobilized discourses of resistance in the application and hearing process. To this end, I examined the IAP's constitutive function, how survivors situated themselves in relation to the IAP, and how they interpreted the meaning of their compensation payments.

I conducted interviews with fifteen Indigenous and non-Indigenous Resolution Health Support Program workers (including Elders and counselors) who worked with survivors before, during, and after IAP hearings. The primary objective of these interviews was to explore how the functions that RHSP workers performed interpellated, mediated, and constructed the discourses of victimization and victimhood. In particular, the interviews provided insight regarding into how RHSP workers prepared survivors for their IAP hearings, how they engaged in performative labour, and how they shaped survivors' experiences in the IAP. In my analytical chapters I explore the dual role of RHSP workers: on the one hand, they are IAP stakeholders and who are empowered by the settler colonial project that structures the narratives of victimization and victimhood, yet on the other, many of them are survivors who act as agents of resistance and indigenization.

I held four interviews with leaders of Indigenous advocacy organizations, some of whom were survivors of Indian Residential School abuse. The organizations included the Aboriginal Healing Foundation, the Legacy of Hope Foundation, the National Residential School Survivors' Society, and the Indian Residential School Survivors Society. These interviews highlighted the demands of Indigenous-led groups representing survivors and provided insight into their activities before and during the negotiations of the Indian Residential Schools Settlement

Agreement (IRSSA) that shaped its content. In these interviews I asked questions that explored the role of a particular organization in negotiating the range of political, legal, and socio-cultural discourses around victimization and victimhood in the IAP. During the interviews, I focused on two specific areas: the types violence for which the Indigenous leaders sought recognition and how the interests of survivors that the Indigenous advocacy organizations represented were made visible in the negotiations of the *Settlement Agreement*. These interviews highlighted how powerful actors shaped the discourses of victimization and victimhood and how they were constructed and interpreted at the organizational and institutional level.

I conducted sixteen interviews with IAP lawyers and adjudicators, which served as the basis for generating insight into their functions as “gatekeepers” and “transitional justice entrepreneurs” (Madlingozi 2010) in the IAP and how they contributed to regulating survivors’ victim status. Data from these interviews contributed to exploring how the IAP empowered adjudicators and lawyers who constructed discursive representations of survivors’ experiences. Further, I used these interviews to examine how performative practices of lawyers and adjudicators shaped the experiences of survivors in the IAP, how IAP claims were adjudicated, and how they constructed narratives of “ideal” and “complex” victims.

3.5.2 Recruitment strategies

When conceptualizing my participant recruitment strategies, I sought to ensure that the collected data would reflect the perspectives of the four populations described above. I considered the unique qualities of each population through what Hill Collins (2000:228) refers to as “the matrix of domination” that specifies the “overall social organization within which intersecting oppressions originate, develop, and are contained.” In concrete terms, this meant that the levels

of empowerment of each research population varied according to their social locations defined by the intersections of gender, class, and Indigeneity in the settler colonial order. “Ordinary” female survivors who attended Indian Residential Schools represented the group that was exposed to the highest levels of domination, marginalization, and oppression, and suffered the most profound economic, political, and social consequences as a result of structural settler colonial violence (Canadian Human Rights Commission 2013), including “poorer overall health status, disproportionate incarceration rates, suicide, addiction, chronic disease, violence, and death” (Wolski 2009:271). The matrix of domination also served as a tool for me to think about the levels of empowerment of other Indigenous participants, such as RHSP workers and Indigenous leaders, who were either direct survivors of Indian Residential Schools or intergenerational survivors, and therefore represented vulnerable populations. However, these participants were often more socially advantaged than “ordinary” survivors. Many of them were able to negotiate and navigate some of the structural barriers of settler colonialism and move beyond some of the harmful consequences of residential schooling more successfully than the most marginalized groups of survivors. The least marginalized and most advantaged research participants were the white, Canadian-born, male adjudicators and lawyers, who were empowered by settler colonial institutions, and by virtue of their ethnicity and gender enjoyed the highest levels of settler colonial privilege.

I recruited survivors, Elders, cultural and health support workers with the assistance of staff at the Ontario Indian Residential School Support Services office in Sault Ste. Marie. To recruit RHSP workers and Elders, I used the following criteria: (a) RHSP worker provided health or cultural support services to survivors who had applied (successfully or not), would be applying, or were in the process of applying for the IAP; and (b) RHSP worker was

professionally affiliated with the Indian Residential Schools Resolution Health Support Program. I followed the appropriate cultural protocols when approaching Elders and cultural support workers, as advised by OIRSSS staff Mike Cachagee. When recruiting survivors, I used the following selection criteria: I contacted (a) survivors who applied or were in the process of applying for the IAP; (b) survivors who received an IAP award; (c) survivors who had access to health support services through the OIRSS; and (d) survivors who were eligible or ineligible to apply, or refused to apply, for the IAP. My OIRSS contacts Mike Cachagee and Claudette Chevrier connected me with survivors and other RHSP workers locally (in Ontario) and across Canada.

To recruit leaders of Indigenous advocacy organizations, I used the following selection criteria: (a) the organization contributed in some capacity (direct or consultative) to the negotiations that led to the IRSSA; (b) the organization represented survivors' interests; and (c) the organization provided services to survivors. Jonathan Dewar, former Director of the Shingwauk Residential Schools Centre at Algoma University, connected me to leaders of organizations within his professional networks, including the Legacy of Hope Foundation and Aboriginal Healing Foundation. I also used publically available contact information on the organizations' websites for recruitment purposes. Finally, I recruited IAP lawyers and adjudicators with the assistance of a key informant, Michael Bay, a well-connected IAP adjudicator whom I had met at a colloquium series at Carleton University and who agreed to connect me with other IAP adjudicators and lawyers within his professional networks. The only eligibility criteria for IAP lawyers and adjudicators to participate in my research were that IAP lawyers were currently representing (or had represented) survivors in the IAP hearings and that IAP adjudicators were presiding (or had presided) over the IAP hearings.

3.5.3 Published data sources

In addition to the interviews, I gathered two published documents related to the IAP. The first is the *Guide to the Independent Assessment Process Application* (Indian Residential Schools Adjudication Secretariat 2013b), also known as the application form that contains the compensation chart. The Guide represents a key document that survivors and their legal representatives complete in order to apply for an IAP hearing. It explains the IAP application process to survivors, determined their eligibility, and provides instructions to survivors on how to complete the *IAP Application Form*. The second relevant source is “Schedule D” of the Indian Residential Schools Settlement Agreement, which comprises the legal basis for the IAP. Schedule D outlines the claims process, presents core assumptions related to the compensation, and defines the roles of IAP adjudicators, lawyers, and RHSP workers.

3.6 Data treatment and interpretation

I utilized the NVivo qualitative data analysis software to organize the interview data visually and thematically. I uploaded the interview transcripts from all my research populations into NVivo and coded them manually in order to preserve and enhance my interpretive potential and to maximize the extraction of subjective meaning and complexity (Saldaña 2010). To code the interview data, I created thematic and sub-thematic categories, or “units of analysis,” that reflected the range of legal, political, and socio-cultural meanings in relation to victimization and victimhood and how these meanings competed, overlapped, reinforced, and contradicted each other. I created these categories by conducting a theoretically informed and close reading of all the transcripts, and populated the categories with clusters of text (thematically-oriented “coding

units”) that I grouped together based on their conceptual content and explicit meaning (Miles, Huberman and Saldaña 2013).

Through a systematic reading of the interview transcripts, I constructed twenty-five conceptual categories and twenty-seven sub-categories. The categories and sub-categories relate to each other thematically and are into hierarchies of coding schemes, with the categories representing broad and explicit descriptors of data, while the sub-categories contained refined and specific segments of data (Lewins and Silver 2007). I then grouped together the categories and their sub-categories into themes that were much broader than any single category, and I crafted each theme as the foundation of an analytical chapter of my dissertation. Ultimately, the themes represent an outcome of the coding process and can be best understood as “a phrase or sentence describing more subtle and tacit processes” (Rossman and Rallis 2003:282). In other words, the themes represented products of phenomenological analysis and embodied the essence of the meaning as a “form of capturing the phenomenon one tries to understand” (Van Manen 1990:87). The process of thematizing the data involved a search for inter-categorical linkages and interpretation of the content of each category and its sub-categories, which I accomplished through reading and re-reading of the interview transcripts. The goal was to identify a series of overarching narratives of a set of data and to articulate repeated patterns that, when examined together, carried implicit meaning (Boyatzis 1998).

I incorporated elements of Indigenous knowledge production in my coding strategies by conducting a theoretically informed reading of the transcripts coupled with a search for their subjective meaning, which is a methodology “congruent with the relational dynamic of an Indigenous paradigm” (Kovach 2010:43). I treated my conversations with Indigenous participants as “collaborative storytelling” (Bishop 1999) where I, as a researcher, became an active

participant in constructing narratives and interpreting them through the various lenses supplied by Indigenous participants to uncover the multiplicity of truths about settler colonial violence. With this strategy in mind, I conducted a repeated reading of the transcripts to gain deeper insight into how the various emerging themes related to each other and created analytical memos that guided my interpretation process. These memos assisted me in recognizing patterns that materialized from the data and in evaluating the key concepts, as well as thinking about what I was learning from the data and critically reflecting on my research practice (Gibbs 2007). In my data analysis I situate elements of Indigenous epistemologies within a decolonizing framework that recognizes complex histories of settler colonialism (Dei 2000) that influence participants' everyday realities and experiences (Memmi 1965).

3.7 Data analysis strategies

My dissertation's data analysis proceeded in two stages. First, I drew on insights from the hermeneutic analysis method to interpret survivor stories. Second, I employed the critical discourse analysis method for analyzing data from: (a) interviews with RHSP workers, leaders of Indigenous advocacy groups, and IAP lawyers and adjudicators, and (b) published sources. Before proceeding to the discussion of data analysis strategies, I wish to make a methodological note: seven of interview participants who were RHSP workers and leaders of Indigenous advocacy groups were also survivors who participated in the IAP. When I approached these participants during my fieldwork, I conducted a single interview session with them that encompassed two distinct approaches: one in which participants and I held discussions related to their experiences in their professional capacity as RHSP workers or leaders of Indigenous organizations, followed by conversations in which they shared with me their experiences as

survivors and IAP claimants. After the interviews, I separated the collected data into two categories (survivors and RHSP workers/leaders of Indigenous advocacy groups) that I analyzed using one of the methods below.

3.7.1 Hermeneutic analysis of survivor stories

Hermeneutic analysis draws on the phenomenological tradition that emphasizes social construction and intersubjective interpretation of reality (Ricoeur 1981). This methodological approach is suitable for analysis of survivor stories because it places them in relation to their social meaning, realities, and lived experiences, and contains elements that could be used to explore Indigenous worldviews, spiritual understandings, and beliefs regarding what counts as truth, reality, and knowledge (Aluli-Meyer 2008). Specifically, hermeneutics overlaps with the Indigenous research paradigm because it draws on the constructivist tradition and recognizes the “interpretive nature of Indigenous knowledges” (Kovach 2009:30).

Hermeneutics is a Gadamerian-based research method that does not critically interrogate the textual meaning, but rather takes into account the multiplicity of ways that experiences can be expressed and interpreted (Fleming, Gaidys and Robb 2003). It represents a method that could be used to account for the realities of marginalized research populations, including victims and survivors, because it seeks to uncover the subjective meaning that participants assign to their life events and “has been used to explore the thoughts and feelings of vulnerable populations with sensitive issues” (Lumbasi and Barron 2016:94). In employing this method, my objective was to carefully interpret and understand survivor stories in relation to their embedded experiences in historical, political, and legal contexts.

Hermeneutic analysis involves several steps: 1) becoming familiar with the text of the interview and immersing myself in the world of historical and institutional meaning created by the interview participants; 2) selecting relevant parts of the interview and interpreting it in relation to entirety of the transcript, which is a process often referred to as *contextualization*, and will include situating the IAP in the context of settler colonialism; 3) identifying themes emerging from the interviews; 4) interpreting the meaning of survivors' statements in relation to the broader interview themes, which will require building intersubjective patterns of meaning that multiple survivor interviews produce; and 5) comparing themes across the interviews and drawing out pertinent quotations (Silverman 1991; Kinsella 2006; Regan 2012). When engaging in hermeneutic analysis, I mobilized Ricoeur's concept of the *hermeneutic arc* (also known as the *hermeneutic circle*) that represents a constant movement back and forth between the participant's explanation and researcher's understanding in order to achieve an in-depth understanding (Tan, Wilson and Olver 2009). My objective was to achieve a *fusion of horizons*, which links what I as a researcher already know theoretically and empirically with that which is unfamiliar and shared with me by survivors (Gadamer 2004). I created memos of patterns that were common among survivor interviews and made notes of the ways in which the IAP was an imposed and dominating process and how it ordered the experiences of survivors. Recognition of these themes and patterns were part of decolonizing methodologies not only because they were integral to Indigeneity and "an epistemology of the colonized, anchored in the Indigenous sense of collective and common colonial consciousness," but also because Indigeneity empowered some survivors to resist and denounce the IAP as a settler colonial apparatus (Dei 2000:117). This strategy of data interpretation contributed to the co-production of knowledge between me

and survivors by privileging their worldviews and narratives, and at the same time exploring them through my own academic research practices and insights.

In accordance with the hermeneutic tradition and Indigenous research methodologies of interpreting textual data, I continuously shifted my focus from the overall meaning of the interview to its specific passages and back to the whole again to conduct a systematic analysis of survivor stories. This strategy has allowed me to build connections between survivors' personal experiences and the broader settler colonial context in which they occur. It also privileged survivors' epistemologies and local knowledges that are vital in their resistance to the settler colonial order and in "questioning institutionalized power and privilege, and the accompanying rationale for dominance in social relations" (Dei 2000:118). To this end, my analysis sought to generate a new understanding of the text that transcended its superficial (internal) interpretation and approached it as a "living communication" (Gadamer 1975). When interpreting survivor stories, my beliefs and experiences contributed to the process of generating a "preunderstanding" of the text, which worked in conjunction with the knowledge that survivors shared with me during the interviews.

3.7.2 Critical discourse analysis

To analyze and interpret data from published sources and interviews with RHSP workers, Indigenous leaders, and IAP lawyers and adjudicators, I used the discourse analysis method. Discourse analysis is an analytical tool that positions a text as an object of investigation and focuses on the language as "a constitutive component of the social world" (Chouliaraki 2008:674). Discourse analysis moves beyond the immediate boundaries of an utterance or sentence and focuses on how language is structured and on the patterns that emerge as people

“they take part in different domains of social life” (Jørgensen and Phillips 2002:1). In other words, discourse analysis is concerned with the way we talk about, interpret, and understand the world (Stubbs 1983). In my analysis of the interview data, I was interested in exploring the meaning that my research participants attributed to their actions that carried a social and subjective orientation (Ruiz Ruiz 2009). Through employing discourse analysis I critically examined how the empowered social positions of IAP administrators and stakeholders engaged in discursive representations of survivors’ experiences of violence.

I employed discourse analysis to articulate how the various IAP stakeholders constitute survivors of sexual and physical abuse as products of competing settler colonial discourses by situating their role in the IAP at the intersections of power, knowledge, and meaning. To accomplish this task, I drew on a particular strand of discourse analysis – Norman Fairclough’s critical discourse analysis (CDA). It was an appropriate methodological and analytical tool for my approach to data analysis and interpretation because it denaturalized taken-for-granted knowledge and language and centred on “the elision of power/domination in theory and analysis” (Fairclough 1995a:17). The benefit of this approach is that it connects the language of micro-interactions with their effects on social structures (Fairclough 2013). It is a methodological tool that systematically investigates not only the linguistic discursive representations of subjects and their social relations, but also how discursive practices allow certain groups to advance their interests, which inherently involve unequal power relations (Jørgensen and Phillips 2002). I investigated how the IAP actors endowed with settler colonial power constructed discourses around victimization and victimhood and “how such practices, events and texts arise out of and are ideologically shaped by relations of power and struggles over power” (Fairclough 1995a:132f).

In conducting CDA, I engaged in multilayered reflexivity in two distinct, yet interrelated ways. I interrogated my own assumptions and pre-determined conceptions of what I had already known about reparations for settler colonial violence and how I came to know it (Nicholls 2009). In particular, I considered how the foundations of my academic knowledge influenced my research process. I approached marginalized knowledge with respect and open-mindedness, which created a space for challenging and unsettling my own unconscious prejudices and Eurocentric attitudes. The second part of reflexivity included closely familiarizing myself with the worlds, realities, and experiences of Indigenous participants that contributed to generating “participatory consciousness” (Heshusius 1994) that led to new ways of ethically knowing and understanding their stories by temporarily suspending preconceptions and judgements.

Through the use of CDA I explored the dialogic nature of power that operated between settler colonial institutions that shaped and reproduced discourses of the IAP, on the one hand, and discourses that emerged from the IAP and influence settler colonial institutional practices, on the other. I employed decolonizing methodologies in the process of analyzing interview data and documents through CDA by examining to how certain actors within and outside the IAP (adjudicators, lawyers, health support workers, and leaders of Indigenous advocacy groups) were endowed with power to construct and reproduce dominant legal, socio-cultural, and political discourses of victimization and victimhood.

To conduct CDA of the collected data, I followed a three-step procedure. First, I conducted textual analysis of the data with the objective of characterizing discourse and treating it as an object (Jørgensen and Phillips 2002). To do so, I coded and categorized the textual data as *communicative events* into relevant parcels of information, much like I have done in hermeneutic analysis of survivor stories that I described earlier in this section. This initial step

invited me to accept the meaning of data at face value and to develop a set of broad themes through thematic analysis. Of course, such an analysis alone was insufficient because it did not examine the relationship between the text and the social world. However, it highlighted the experiences of IAP practitioners and stakeholders, identified commonly held values and attitudes, and examined how the interactions between IAP actors and survivors were framed. To build connections between the text and the “real world,” proceeded to the second step, in which I conducted contextual analysis of language as discursive practice that involved placing the text in relation to “a specific time and place within a given symbolic universe,” within which actors “have their own discursive intentions” (Ruiz Ruiz 2009:para 27). After all, texts are produced and consumed through discursive practice, and discursive practice mediate the ways that texts introduce change into and how they are shaped by social practice (Jørgensen and Phillips 2002). Drawing on decolonizing methodologies I examined how powerful IAP actors and the IAP as a legal process established certain discourses as dominant while other discourses remained relatively invisible. In this step I used CDA to develop contextual analysis that elicited the meaning of discourse to subjects who participated in it and articulated their interpretations of social encounters that gave rise to discourses (Fairclough 1995b). In the final stage of CDA – sociological analysis – I examined discourses of victimization and victimhood as part of social practice, which required interpretation and application of theoretical approaches and consideration of the social space in which they are located. I drew on anti-colonial theory and critical victimology to expose linkages between discursive practices of IAP stakeholders and the social, political, and historical context in which they emerge. In this step I determined the “order of discourse” that involved identifying the hierarchy of discursive practices and the role they

played in informing and being informed by the different types of settler colonial contexts in which they were located (Wodak 2004).

Chapter 4: Hierarchies and ordering in the Independent Assessment Process

4.1 Introduction

In this chapter I explore how the network of actors associated with the IAP shapes the discursive and material representations of survivors' experiences. These actors include lawyers, adjudicators, RHSP workers, and external medical professionals (such as psychiatrists), who challenge and transform the scope of traditional critical victimology and reparations. As I have briefly noted earlier in my dissertation, the IAP represents a response to, and a product of, settler colonial violence. In this process, powerful actors play a central role in structuring discourses of victimization and victimhood that function as tools that are mobilized in granting or denying victim status to survivors. In this chapter, I examine how the IAP, as a modality of settler colonial legal institutions, disempowers survivors and "reinforces [their] lowly place in the social hierarchy" (Slyomovics 2014:267).

In my analysis I explore how the IAP challenges and transforms various constitutive elements of critical victimology, including the hierarchy of victimization (Carrabine et al. 2004) and the "ideal" and "complex" (McEvoy and McConnachie 2012) victim categories. I discuss how the IAP is not so much interested in ascertaining and investigating the role of "complex" victims as both survivors *and* perpetrators of Indian Residential School violence. Rather, it is concerned with what I refer to as "difficult" victims, which is the term I use to denote survivors whose personal qualities, such as poor memory and substance abuse issues, pose challenges to their participation in the IAP. "Ideal victims," in contrast, are expected to present reliable and credible testimony in front of the adjudicator in order to emerge from the hearings as successful claimants. The IAP lawyers and RHSP workers train and coach survivors to negotiate the space between the "ideal" and "difficult" states by interpellating them with performative qualities that

are based on various socio-cultural discourses of “how victims should act.” To this end, survivors are invited to comply with discourses of victimization and victimhood that are characterized by a number of double binds that require survivors to exhibit the qualities of both “ideal” and “difficult” victims.

I examine how the IAP constructs the hierarchy of victimization that orders the experiences of “ideal” and “difficult” victims and how it relates to the commodification and monetization of survivors’ experiences of abuse. I focus primarily on the practices of IAP lawyers who act as gatekeepers, regulate victim status, and bestow it on survivors whom they consider “deserving.” The lawyers construct “deserving” survivors in relation to a particular type of hierarchy of victimization, which is structured based on financial value that successful IAP claims generate, which guide the lawyers’ selection of cases for legal representation. The lawyers also mobilize discourses of financial risk management and profit extraction to inform the hierarchy of victimization, which places unprofitable or low-value cases at the bottom, and at the same time invisibilizes the experiences of abuse of those survivors.

I develop an analysis of several other hierarchies and ordering mechanisms that structure the experiences of survivors in the IAP. First, I conceptualize the “the hierarchy of legitimacy” that encompasses the ordering of the post-IAP hearing health care services, known as Future Care Plans, which survivors are eligible to receive as part of their financial compensation packages. In this hierarchy, institutional power prioritizes and legitimizes Western biomedical discourse and expertise over Indigenous healing practices, which occupy the bottom of the hierarchy. I discuss how survivors’ experiences of abuse are filtered and sanitized through the Western biomedical and clinical framework to construct them as “objects of reparatory work” (Henderson 2013) and to transition survivors to settler colonial self-supersession (Veracini

2011). The hierarchy of legitimacy reproduces the power relations between the colonizer and colonized by simultaneously privileging Western expert knowledge and devaluing Indigenous perspectives about what counts as harm.

Second, I develop the concept of “the hierarchy of losses” in the IAP that denotes a particular way of accounting for the consequences of abuse, which are constructed primarily in relation to lost wages and opportunities that survivors suffered as a result of their experiences of abuse. This hierarchy is structured in such a way that prioritizes material and financial damages that impaired survivors’ potential for gainful employment and wage earning, while at the same time disregarding the impact of cultural loss and other consequences of abuse that defy calculation. The liberal ideology behind this approach to accounting for damages construct survivors’ human worth strictly in relation to their ability engage in meaningful contribution to the settler economy.

4.2 Victim status and the hierarchy of victimization in a settler colonial context

As a product of the Canadian legal system, the IAP challenges the scope of traditional critical victimology because it requires it to account for settler colonial institutional practices. Despite its focus on power relations and structural forces that produce victim status, critical victimology has not yet sufficiently adapted to examine and account for systemic violence against Indigenous peoples. As a result, ongoing structural violence provides critical victimologists with new terrain to explore that compels it to re-examine the constitutive qualities of victim status that are subject to the unjust power relations between the colonizer and colonized. To facilitate the discussion, I begin by charting out how the IAP complexifies the construction of victim status and transforms the “ideal” and “complex” victim categories in traditional critical victimology.

In critical victimology, the complexity of victim status corresponds to the complicity and blameworthiness of victims in their own victimization. Such an approach to conceptualizing “complex” victims offers insight into a particular type of violence endemic to the Indian Residential Schools: lateral violence, which is an umbrella for the type of contemporary violence that originated from dispossession and assimilation associated with the attendance of Indian Residential Schools and transformed into various toxic behaviours in Indigenous communities including bullying, shaming, and undermining other community members (Native Women’s Association of Canada 2011; Bombay 2014). Survivors who engage in lateral violence are not only “complex” victim in the sense that the victimology literature defines them, which is largely in terms of their status as a victim *and* perpetrator, but rather more generally as victims of an unjust social order (McEvoy and McConnachie 2012). After all, the Indian Residential Schools have created the conditions that produced and continue to produce both victims and perpetrators, where both groups are marginalized and oppressed. However, just because the IAP does not openly acknowledge does the complexity of victim status not mean it ignores the experiences of “complex” victims. I speculate that by focusing exclusively on the experiences of survivors as victims, the IAP may, in fact, be recognizing the structural violence of settler colonialism by not disqualifying “complex” victims from participation.

However, there may also be another explanation. Reparations are often required to fall within a particular narrative, and in Canada it is one of reconciliation, which is embedded in discourses of nation building and peacemaking (Mackey 2002). This model is not unique to Canada. In Chile, for example, the reparations programs recognized “complex” victims as victims of the state wrongdoing (Garcia-Godos 2008), while the reparations program in Sierra Leone made no distinction between innocent victims and “complex” victims and awarded

reparations based not on a “person’s past actions but rather on what violations have been suffered by him or her” (Truth and Reconciliation Commission of Sierra Leone 2002:245). What is problematic in the Canadian case is that once a victim-perpetrator has been named a “person of interest” in the IAP for their actions as perpetrators of abuse, there is little that can be done to clear his or her name or verify allegations against them because the IAP does not seek their participation at the hearings (Michael, survivor, 17 June 2016).

The hierarchy of victimization (Carrabine et al. 2004) in the IAP transforms the relevance of the traditional “ideal” and “complex” victim categories (Baines 2009; Bouris 2007) by articulating victim status primarily in relation to survivors’ ability to secure a financial award at their hearings. In this manner, the IAP reserves judgement of claimants’ guilt or innocence in favour of their potential to produce convincing testimony in front of an adjudicator. So how exactly does that IAP transform the meaning of the “ideal” and “complex” victim categories? In the IAP the “complex” victim is transfigured into what one IAP lawyer referred to as “difficult” claimants – survivors who do not embody the range of appropriate personal qualities and behaviours, as well as fail to conform to Western discourses of credibility and reliability of testimony (Rock 2002). Specifically, “difficult” claimants in the IAP are constructed as what Sandra Walklate (2007) conceptualizes as “Victimological Others” – persons whose experiences are discarded because they do not conform to accepted discourses of victimization. Survivors who may have a history of substance abuse issues, suicide attempts, and psychological and emotional fragility that renders their testimony at the hearing unconvincing, non-credible, and unreliable (George, IAP lawyer, 15 July 2016) are constructed in the IAP as “Victimological Others.” The irony here is that in many cases it is the Indian Residential School abuse that is

being claimed constitutes the very reason why survivors have become “difficult” claimants in the first place, and is now being used against them as a legal defense for denying their claims.

In contrast to “difficult” victims, “ideal” victims in the IAP are expected to display qualities of credibility and reliability that lead to satisfying the Western legal standard of proof, which is a balance of probabilities. “Ideal” claimants are expected to achieve a certain level of healing and order in their lives that, according to one survivor, required him to undergo “counseling, quit drinking, quit everything that’s bad for me” (Joseph, survivor, 4 July 2016). The legal process of constructing “ideal” claimants transitions survivors toward assimilation by forcing survivors to comply with the Western legal framework or risk having their claims denied (Veracini 2011; Wolfe 2006). In other words, the IAP expects “ideal” claimants to perform victimization and victimhood according to legal standards that incorporate Western discourses of health, wellness, and the body.

At the IAP hearings, claimants are expected to display a number of conflicting characteristics of both “ideal” and “difficult” victims. On the one hand, the claimant has to be damaged or broken, “traumatized, abused, indoctrinated to be a Christian, somebody who’s been institutionalized” (Jason, survivor, 1 August 2016). On the other hand, claimants must also be articulate and logical, have a good memory and emotional stability, possess a formal education, exhibit the ability to interpret complex legal documents, demonstrate the capacity to make competent legal decisions, and be “knowledgeable in the government ways” (Melissa, RHSP worker, 1 August 2016). In other words, survivors appearing before an IAP adjudicator must occupy a space characterized by a series of legal “double binds” that are enshrined in the law that is neither objective nor neutral (Conley and O’Barr 1998; MacKinnon 1989). In Nicola Henry’s research on wartime rape she observes that if a survivor of sexual violence appears:

...too emotional or too traumatized, [then] her memory is corrupted and she cannot be a reliable witness; but if she is calm and in control, she could not have been violated and she is therefore calculating and lacking in credibility. Whereas the former treats the witness as merely evidence, without subjectivity and agency, the latter treats the witness as an agent of manipulation (Henry 2010:1111).

In the IAP, the survivor is *not* “a truthful witness” whose credibility is initially presumed, but rather must first be established and negotiated in relation to the “difficult” and “ideal” states (Campbell 2002:172; Kirchhoff 2010). “Difficult” claimants encounter problems in successfully completing tests of memory and credibility thus rendering their testimony unreliable, while “ideal” claimants appear overly credible and reliable for what should have been a traumatic experience for them.

In my interviews I noted several parallels between Nicola Henry’s research on wartime rape and the IAP, with one particularly interesting observation regarding the *believability* of the IAP claimant. Survivors, who are also their own best witnesses because most of the abuse occurred in private, must embody several paradoxical yet productive elements: they must be traumatized and indoctrinated yet articulate and logical; succumbed to substance abuse yet able and ready to share their story in a coherent and emotionally stable manner; abused in most personal and private areas of the body, yet ready to publically forgive and accept an apology from a stranger (i.e. lawyer representing the Crown)¹². The double binds between the IAP adjudicator and survivor reflect the power dynamics in sexual assault trials where the law represents male interests and reproduces the relations of male dominance over the female victim (MacKinnon 1989). At the IAP hearing, the adjudicator tests survivors’ memory to evaluate their credibility and reliability by asking questions about their Indian Residential School experiences:

I think some of these things, like, “What kind of food did you have, tell us about your daily routine, what courses did you take?” are trying to give you, as an adjudicator, the background of the witness themselves. To sort of get a sense of what the witness knows,

¹² Lawyers representing the Crown issue apologies at IAP hearings regardless of the outcome of the hearings.

how much they remember, and if they can't remember a whole bunch of other things, but remember just the physical abuse, but can't remember anything else, well are they in fact exaggerating? Is their evidence credible? (Ryan, IAP lawyer, 16 August 2016).

These tests of memory are problematic when applied to survivors because they assume that survivors are non-credible and unreliable witnesses unless they can prove otherwise, which demonstrates settler colonial denial (Cohen 2001). The IAP advances settler colonial self-supersession by naturalizing an official state process and by reaffirming the settler colonial status quo through the use of epistemic hierarchies (Grosfoguel 2007) that marginalize the epistemologies of the oppressed. The tests of memory embody masculine values and attributes as the norm: survivor testimony is rewarded when it is impersonal, not excessively emotional, objective, and detached from their subjective experiences (Gilligan 1982). The IAP incorporates elements of Western law in the form of legal discourses of credibility and reliability that are, in fact, informed by patriarchal ideologies, or more precisely, discourses of credibility and reliability are located at the intersections of “the mutually sustaining discourses of patriarchy and colonialism” (Wolfe 1999:87) whose ultimate objective is the elimination of the Native (Wolfe 2006) through assimilation.

There are also a number of parallels that run between feminist scholar Catharine MacKinnon's argument that “the law sees and treats women the way men see and treat women” (MacKinnon 1983:644) and how the IAP treats survivors. First, the IAP's evaluation of survivor testimony legitimates colonial rule over survivors and reproduces survivors' marginalized position in the social hierarchy. It does so through the adjudicators' questioning that focuses on *facts* of physical and sexual abuse constitutes survivors as disempowered subjects who represent the addressees of the questions that subsequently result in the disqualification of “other knowledges and experiences” (Smart 1989:11) by effectively silencing the voices of survivors.

Second, the tests of credibility and reliability do not account for a potential double bind that emerges when there is a complex interaction between trauma resulting from Indian Residential School abuse and its impact on a survivor's memory: "people can't remember a lot of things about what happened because their brains have protectedly buffered them from all the memories that they might have had otherwise" (Anna, RHSP worker, 5 August 2016). The tests of memory seek to uncover the legal, singular, and objective "truth" through discursive practices that are deeply embedded in the relations of oppression and domination. The IAP's search for objectivity reflects Catharine MacKinnon's argument that the law legitimizes itself through patriarchal societal standards in which objectivity is the norm (MacKinnon 1983), while at the same time disregarding Indigenous epistemologies and ontologies that view truth in dynamic, holistic, and relational terms that accept the truth's embeddedness in people's everyday realities, experiences, and subjectivities.

Survivors' subjectivities and versions of truth and experiences, which are socially constructed, subjective, and dynamic, are at odds with Western legal epistemologies in which *knowing* the truth itself carries little weight: "it's not what you know, it's what you can prove," as Denzel Washington famously proclaims in *Training Day* (Fuqua 2001). The hegemony of the objective/legal truth over the subjective/socially constructed/experiential truth is rooted in settler colonial power that structures racial and cultural privilege and recognizes certain epistemologies and ontologies as legitimate while discounting others. For survivors, truth carries a powerful meaning as it is intertwined with Indigenous worldviews: "we all are taught respect and always tell the truth, that's the first lesson in life is to always tell the truth." (Michelle, RHSP worker, 13 May 2016). Truth is relational and is steeped in oral tradition:

This is what I believe to be the truth because my ancestors told me that because their ancestors told them that. So why am I saying something that I believe to be the truth and

[lawyers and adjudicators] don't believe me? It's just a fact, it's factual, it's one of those things that we see (Matthew, RHSP worker, 15 May 2016).

Of course, survivors' versions of cultural truth are unacceptable in the IAP because it is concerned with truth that can be verified or discredited through technical legal arguments that can be used as defenses for the acts of abuse against survivors thereby sheltering the government from liability. Points of conflict between Indigenous worldviews and subjectivities, on the one hand, and Western legal discourses, on the other, are visible when the IAP lawyers and adjudicators ask survivors for positivist, objective, and verifiable *legal truth*. In my conversation with one survivor, she expressed frustration about the necessity of hiring a lawyer, when her story in her own words should have sufficed as evidence: "Why do I need a lawyer, it's abuse, it's abuse [laughs]. Can't you just take my word for it? You know?" (Susan, survivor, 29 June 2016).

One way to understand the rationale behind a compensation system that rewards claimants who occupy the space between "ideal" and "difficult" is that it is designed to accommodate a set of narrow and specific personal qualities that reflect the requirements of the Canadian legal system. The IAP adjudicator appears to search for authenticity in survivor testimony, which is a process that involves verifying it against particular imaginary (often linear and stereotypical) Indian Residential School narratives of survivors' life courses. On the one hand, the IAP is not a system that is designed to process a "difficult" claimant:

[IAP lawyers and adjudicators] have in their mind a person who's probably more articulate than they're ready for, than they experience, someone who is probably more open and ready to both receive an apology and forgive, they're not ready for this angry, impaired person who comes in just hanging on by an emotional thread, realized what they have to tell aloud, and had a few drinks for their courage, someone who is accusatory and blames everybody, whose story changes every time that they speak, you know, doesn't have a particularly powerful memory about...here they sit as a 65 year old, something that happened to them when they were 8, you know, but who does, right? (Eric, leader of an Indigenous advocacy organization, 22 June 2016).

On the other hand, the IAP represents a system that, paradoxically, cannot function without “difficult” claimants:

There was a very clear assumption that if you didn’t become an alcoholic, it didn’t count for the compensation. Like if your life didn’t fall into absolute chaos that resulted in alcoholism that resulted in, you know, treatment and lost jobs and lost careers and all that, then the damage wasn’t as great (Linda, RHSP worker, 13 June 2016).

Based on the RHSP’s assessment, one would assume that extreme damage would boost the compensation value because it would likely correspond to a highly abusive act, yet in the IAP it is not necessary so because the consequences of abuse could impede the presentation of survivor testimony, resulting in a double bind. Ideally, survivors would suffer the degree of inflicted damage that was severe enough to guarantee compensation, yet the impact of the abuse could not have been so profound that it rendered claimants unable to corroborate their testimony with sufficient credibility and reliability.

4.3 Preparation of survivors for the IAP hearings

Building on my previous discussion of “ideal” and “difficult” victims, I now turn to the discussion of how the IAP lawyers and RHSP workers engage in performative labour and discursive practices that manage and regulate the expression of survivors’ experiences of abuse with the ultimate goal to communicate them in ways that conform to the legal narratives of victimization and victimhood. The IAP lawyers and RHSP workers are well aware of the complexities involved in generating a successful IAP claim and navigating a compensation process that is characterized by double binds and paradoxes. These actors represent powerful agents of the state whose role as gatekeepers regulates access to victim status and engage in various risk assessment and management strategies to ensure survivors’ success at their hearings.

4.3.1 Performative labour of RHSP workers

RHSP workers engage in discursive representations of survivors' victim status by drawing on their role to negotiate the space that survivors occupy between the "difficult" and "ideal" states. In building my argument, I position RHSP workers as actors who are instructed to mobilize Western legal tools that ultimately reproduce the relations of domination and contribute to settler colonial self-supersession (Coulthard 2007; Veracini 2013). Specifically, RHSP workers prepare survivors for the IAP hearings by working with them to internalize the hearings' procedures, norms, and expectations. RHSP workers help survivors to navigate this space by shaping their performative strategies "to address any thinking errors that may be attached" to their testimony and to promote emotive expression where "they're encouraged to allow themselves to feel their feelings and that can involve helping them develop a feelings vocabulary" (Linda, RHSP worker, 13 June 2016).

The final product of RHSP workers' performative labour is a Canadian legal subject into which the survivor is transformed. To facilitate a transition to a legal subject who now has the necessary instruments to participate in an IAP hearing, the RHSP workers teach them various strategies that include:

Coping skills and positive coping, like relaxation and grounding. [They] learn to associate that with actually being able to be calm instead of feeling like they're re-experiencing that or something like that where it's really intense. They can talk about it and be a little more objective or detached, you know, just so that they can...when they get to their hearing, they can express themselves without losing track of what they're trying to say (Linda, RHSP worker, 13 June 2016).

To this end, survivors are able to recount their feelings and memories without being overwhelmed, yet remaining coherent, which is a strategy that contributes to their compliance with the informal rules of a quasi-legal IAP hearing and leads to the construction of governable subjects who have a greater chance of succeeding in their claim.

4.3.2 IAP lawyers as chief architects of the hierarchy of victimization

Much like RHSP workers, IAP lawyers represent intermediary agents operating between survivors and adjudicators who manage the communication of victim status (Strobl 2004). The communication and regulation of victim status involves ensuring that survivors perform legal narratives of victimization and victimhood in front of the adjudicator at their hearings, who embodies the ultimate authority to judge, evaluate, and verify survivor testimony. Before considering how the IAP lawyers construct the hierarchy of victimization, it is important to theorize the performative qualities of reparations more generally. Reparations *constitute victims* through socio-legal performances, in which reparations place certain demands on victims through what Kimberly Segall (2002) refers to as “victim-acts” – linguistic utterances and performative spectacles that take place before an audience. Legal discourse structures victim narratives by filtering them through various systems of control, including “the imposition of time constraints, formalized qualifications for benefits, codified identifying language as deployed in legal mandates, and narrative formulas that require condensed beginnings and conclusions” (Segall 2002:618).

Performances and utterances may also serve as tools of what John Austin theorizes as “illocutionary acts” (Austin 1962) through which victims *constitute themselves* by publically declaring the violence committed against them and expressing the suffering they endured. In effect, successful narratives of victimization and victimhood are performed in a convincing, promising, and commanding manner that compels the audience to obey their presentation (Ruiter 1993). Victims’ performances “do what they say” (Elander 2018:12) by enacting victimhood, and in doing so, “they constitute truth” (Stone Peters 2008:184).

The IAP adjudication process animates discourses of socio-legal performances of victimization and victimhood in which the authority of the adjudicator, which draws power from its social and linguistic *conventions* (Austin 1962). These convention, which are often unquestioned, establish the adjudicators as powerful actors who address and constitute survivors through demands for theatrical displays in which “the act of recognition becomes an act of constitution: the address animates the subject into existence” (Butler 1997:25). The adjudicators apply legal norms to evaluate survivors’ performance of victimhood and victimization, which is a process that bestows recognition on claimants *as* victims, and is contingent upon the adjudicators’ power to constitute claimants as subjects of Canadian law. The adjudicators’ designation of claimants as victims represents an illocutionary act that communicates the message “I now recognize you as a victim” and thus implicitly signifies victims’ compliance with Western legal norms.

When asked about preparatory work in advance of the hearing, one IAP lawyer spoke of the importance of performative qualities of victimhood and specifically that an ideal claimant needed to show genuine human emotion with the ultimate objective to convince the adjudicator of the impact of the abuse. He specifically stated that his clients must necessarily appear exhausted at the hearing, as if they have told the whole truth, and instructed his clients to exhibit what he saw as a critical element of the hearing: “I want your tears and I want them to be real” (Mark, IAP lawyer, 6 July 2016), which is an assumption that is imbued with narratives of authenticity in witnessing of human rights violations (Cubilié 2005). This display of emotionality requires comprehensive coaching and preparation in order to construct the hierarchy of victimization, at the top of which is a claimant who is “deserving,” to borrow Jennifer Henderson’s (2013:70) terminology, and who must necessarily appear innocent and vulnerable

(Strobl 2004). Through this legal vocabulary, survivors constitute themselves in relation to the IAP's performative requirements. However, such preparations cannot be so extensive as to lead the adjudicator to believe that claimants had practiced their testimony in advance of the hearings. "I want that to be fresh," the lawyer observes, and "that the limited human emotion that comes out when you first tell your tale or you tell it after a long period of time" (Mark, IAP lawyer, 20 July 2016). In this regard, it is in the interest of the lawyers that survivor's pain is not minimized through healing, but rather be displayed as raw and persisting at the hearings.

The demands placed on survivors for performing emotional labour to train themselves to express genuine human feelings may seem artificial and unnatural, yet as I argue earlier, the claimant must (paradoxically) appear emotional/damaged *and* logical/consistent at once (Hochschild 1979). This is where the art of practice and repetition of testimony plays an important role because even though the adjudicators and lawyers representing the Crown are not readily permitted to cross-examine claimants at the hearings, they are often able to cross-examine their testimony for factual consistency¹³. In an interview with a lawyer representing survivors, I learned about how he "over-prepared" his clients as to avoid any deviation of testimony from the prescribed narrative of abuse and harm in order to boost the credibility and reliability of the claimant (George, IAP lawyer, 22 July 2017). Indeed, some survivors confessed that they had practiced their testimony as many as 250 times a week to eliminate any inconsistencies between their IAP application and oral submissions at the hearings (Brian, survivor, 29 July 2016).¹ In their preparations to give testimony at the IAP hearings, survivors are required to recall and memorize details related to the abuse, including time periods and

¹³ Interestingly, the Schedule D of the Settlement Agreement stipulates that "questioning in the form of cross examination is permitted where required to do this" (Indian and Northern Affairs Canada 2006: 9), yet a 2011 news release by the Indian Residential Schools Adjudication Secretariat clarifies that "there is no cross-examination."

locations of the school(s), types of abuse, frequency, names of perpetrators, and the “events surrounding the abuse” (Indian Residential Schools Adjudication Secretariat 2013b:16).¹⁴

IAP lawyers recognize the need to manage the uncertainty associated with survivor testimony by increasing its predictability, and these practices are at odds with the reality of survivor testimony that can take unpredictable turns and take on a life of its own without warning. By instructing their clients to rehearse their testimony – a technique designed to minimize the likelihood of failure through practice – lawyers manage uncertainty and, concurrently, invite survivors to comply with legal narratives of “how a victim should act” (Rock 2002). IAP adjudicators use subjective judgement to determine how much survivor’s oral testimony can deviate from their written application before it is considered unreliable. The lawyers with whom I have spoken noted that in many cases IAP adjudicators often recognized that survivor testimony was not always required to match their written applications word-for-word, but rather it must have been believable enough and demonstrated a degree of factual integrity (Richard, 4 July 2016; Mark, 6 July 2016; and George, 15 July 2016). One survivor, speaking from his experience as a rejected applicant, recalled that his oral submission at the hearing was rejected because it did not match his written application: “You gotta remember exactly everything that you wrote down. Mine was all over scattered, and [the adjudicator] could poke holes in it, every time you want to” (Brian, survivor, 29 July 2016).

IAP lawyers further manage uncertainty and increase the reliability and credibility of survivor testimony by interviewing them periodically over an extended period of time leading up to their hearings to achieve what is often known as “progressive disclosure:”

¹⁴ The IAP Application Guide also contains sections that require survivors to supply supporting documentation that confirm the locations of the Indian Residential Schools that survivors attended, income and opportunity loss, harm suffered and treatment received, and education and work history. I explore these in the next chapter as “mandatory documents.” For the purposes of giving testimony at the hearings, survivors are primarily responsible for remembering and disclosing facts related to the abuse to the adjudicator.

So it could be that at the hearing the claimant reveals more aspects to the story than was in the application form. So it's not a requirement that those things have to match exactly, but...of course we want, we hope that our claimants is able to tell the story consistently. And that certain inconsistencies can count against them from the point of view of reliability and credibility (Jordan, IAP lawyer, 25 August 2016).

In other words, survivors often do not reveal their experiences of abuse in their entirety at their first meeting with a lawyer, but rather do so over time and in pieces. One lawyer shared with me that “hugging became rape in one instance in my case,” which is why it was necessary to schedule “anywhere from one to four calls...and these would be progressive preparations” (Mark, IAP lawyer, 20 July 2016). Ideally, a claimant would disclose his or her entire history of abuse prior to the hearing, which would then allow his or her lawyer to eliminate uncertainty by undertaking detailed preparations of testimony to ensure that it matches the IAP application, and subsequently, the oral submission at the hearing.

4.4 Survivors as financially profitable subjects

In this section I discuss how the IAP constitutes survivors as financially profitable subjects. I continue to draw on the concept of the hierarchy of victimization to argue that the construction of the “ideal” and “difficult” victim categories in the IAP is facilitated through the commodification of survivors’ experiences of abuse and in this process the IAP lawyers are the key actors in regulating the range of meaning of victimization and victimhood (McEvoy and McConnachie 2012). In effect, the lawyers’ assessment of profitable claims regulates access to victim status and the lawyers hold the ultimate authority to enable or foreclose its recognition (Bouris 2007; Huyse 2002). After all, the compensation process was designed to accommodate *them* rather than survivors, and settler colonial privilege invested in the lawyers allows them to govern and manage the colonized through legal means (Coulthard 2014). What is problematic about this

construction of the hierarchy of victimization is that it disregards the experiences of survivors whose cases are not profitable enough to be selected by the lawyers. The lawyers engage in profit-oriented risk assessment strategies to construct the hierarchy of victimization that privileges the experiences of survivors who are able to secure the highest levels of financial compensation. It constructs them as “designated victims” who represent “a person [who] does not regard himself/herself as a victim but is regarded as a victim by relevant others” (Strobl 2010:6). Strobl’s insights are relevant to my discussion, but I would like to modify them in one particular manner to sensitize them to the settler colonial context. Survivors *may*, in fact, view themselves as victims of physical and sexual abuse, but it is the subjectivities of IAP lawyers that construct them as victims of solely financially relevant violence, rather than as victims of what survivors themselves consider the most harmful violence.

In constructing the parameters of the hierarchy of victimization, lawyers engage in practices of risk management and governance of the emotional labour of survivors, in which the lawyers engage in actively constructing their clients’ testimony as factually relevant, which is what an IAP adjudicator expects at the hearing: “we applied our legal skills in ensuring that we maximized the relevant facts and minimized the irrelevant. The clients are not trained or objective enough to do that” (George, IAP lawyer, 15 July 2016). The “relevant facts” the lawyer is referring to relate to the sexual and physical abuse, while the “irrelevant facts” are those that do not contribute to the success of the claim. In other words, the “ideal” victims in the IAP include survivors whose written applications and oral testimony will be successful in producing an IAP award at their hearings. The “difficult” victims, in contrast, are survivors whose claims are considered undesirable because they are less profitable or “really don’t have any prospect of success” (Frank, IAP lawyer, 24 August 2016). The hierarchy of victimization in the IAP

structures the *type* and *degree* of abuse that survivors experienced, which is then monetized by the lawyers.

Aside from establishing and reinforcing the expectations and assumptions in relation to what counts as relevant and irrelevant facts, the lawyers' practices raise questions around the role of non-compensable testimony at the hearing. This is an important issue to address because survivors are not only allowed, but also encouraged, to share all their memories of their time at the Indian Residential Schools, such as their feelings of loneliness, impacts of gender segregation, and removal from families and communities. I learned that the act of sharing stories of non-compensable violence and harm played a functional role in the hierarchy of victimization because it orders the experiences of survivors in particular ways. Solicitation of non-compensable testimony represents a strategy that IAP lawyers and adjudicators engage to put survivors at ease and to create a degree of comfort required for them to share their story of *compensable acts and their consequences* at the hearing, which populates the top of the hierarchy of victimization. In other words, the objective of non-compensable testimony, which is often guided by the adjudicator's questioning, establishes a superficial, temporary, and functional bond of trust between the survivors and adjudicators, lawyers, and the RHSP workers, as well as promotes the disclosure of facts related to the abuse.

In my interviews with the IAP lawyers I discovered that there was often a strong tendency for them to select high-value low-risk clients based on the prospective success of their claims. One explanation for the tendency to select only high-value cases is that all IAP lawyers work on a contingency fee that ranges from 15% to 30% of the total value of the claim. One lawyer explains the incentive to accept applications that would likely result in significant financial gain: "You know if I take a case and I'm going to be paid \$13,000 for working on this

case for 3-5 years, well how many lawyers are gonna do that?” (Sarah, IAP lawyer, 8 June 2016). The contingency model encourages lawyers to “cherry pick” claimants and to abandon lower-value claims (below \$40,000 or \$50,000) in which the payout does not justify the legal expenses invested in preparing their claims:

Let’s say, someone who has a low SL1 [referring to a claim of the lowest level of sexual abuse], let’s say some inappropriate sexual touching, no severe effect on their lives or their employment. They’re looking at \$10,000-\$15,000. In the best case, I’m going to make maybe what, \$3,000 off that? (Richard, IAP lawyer, 4 July 2016).

As a result, survivors whose claims promise a relatively low financial value are often told in consultations with their lawyers to represent themselves at the hearings. This was problematic advice because in the legal profession, self-representation is often considered a foolish idea because the opposing party is likely to be represented by a lawyer. This is almost always the case at the IAP hearings, where a lawyer representing the Crown is present.

The consequences of not being selected for legal representation are quite profound for many survivors, who are much more vulnerable than the average Canadian. For one, the IAP hearings reproduce the unjust power relations between the colonizer and colonized because survivors are unevenly matched with Crown lawyers and are at a disadvantage from the start. Second, the IAP is a complex legal process that is not well suited for survivors who choose to represent themselves and for this reason many survivors choose not to participate in the IAP, which causes the truth about their Indian Residential School experiences to remain hidden: “The opportunity to tell their story of their abuse was denied...because the lawyers were not accepting...their claim, and they’re not confident in proceeding on their own” (Sean, IAP lawyer, 20 May 2016). After all, the IAP is a legal process conceived and executed by the Western legal system and most survivors require the assistance of a lawyer in completing their applications that necessitate proficiency in legal knowledge that many survivors do not have.

One self-representing survivor, who was abandoned by her lawyer, shared with me in an interview that her claim was rejected three times because of her inability to complete the IAP application form correctly and to use the appropriate legal terminology to describe the abuse committed against her (Susan, survivor, 29 June 2016).

The IAP lawyers usually regard these low-value and high-risk claims as undesirable, or at the very least consider them low priority, which leads to the establishment of a financial value-based hierarchy of victimization: “there are concerns where lawyers have not returned calls to their clients, there are stories where the lawyers prioritize cases, so people with lesser amount in their claim don’t rate as a high priority” (Michael, survivor, 17 June 2016). Through the hierarchy of victimization based on a financial risk assessment, the IAP structures the relations of oppression and domination between survivors and their lawyers, in which survivors are often left disempowered and do not receive appropriate legal support because lawyers tend to focus their attention on more profitable claims instead.

As part of their profit-oriented legal practices, law firms participating in the IAP often hire “form fillers” – paralegals who can be paid less than lawyers. Form fillers play the role of the intermediary between survivors and law firms. Their job is to ensure that survivors have filled out their IAP application forms correctly and to help law firms to process a high volume of IAP claims relatively inexpensively and quickly, which in turn allows them to retain as many survivors as clients as possible. One lawyer likened the form fillers to an “IAP machine” that allowed lawyers to process a large number of IAP applications, but without spending large amounts of time required to give sufficient attention to any one of their clients (Robert, IAP lawyer, 15 July 2016). The unfortunate reality of this model is that survivors were supposed to be at the key stakeholders in the process which, in the end, disproportionately enriched the IAP

lawyers, who were “the people that got ‘compensated.’ They’re the real beneficiaries” (Andrew, survivor and RHSP worker, 9 July 2016). When not using form fillers, some lawyers intentionally inflate survivors’ claims to maximize their contingency fees, such as launching false claims of abuse (Carol, RHSP worker, 6 July 2016; Brian, survivor, 31 July 2016).

4.5 Survivors as consumers of Western medical services

I will now explore how the IAP constructs survivors as consumers of Western medical services that are issues to survivors as part of their post-IAP hearing after-care compensation packages. I build on Howard Becker’s (1967) concept of the “hierarchy of credibility” to develop the concept of the “hierarchy of legitimacy” in the IAP. Becker’s hierarchy of credibility is constructed largely in terms of “judgments of who has a right to define the nature of reality” (Becker 1967:244), with this hierarchy directly engaging the question of power. I examine the hierarchy of legitimacy by focusing on the institutional power of Western biomedical discourse in the IAP. In particular, I suggest that Western biomedical discourse is more powerful than Indigenous discourse of traditional healing and when the two are at odds, Western biomedical discourse prevails. In my discussion, I also explore how the IAP reproduces the settler colonial logic of elimination and self-supersession by simultaneously authenticating Indigeneity and erasing it (Veracini 2011).

The IAP’s reliance on biomedical instruments to measure abuse and harm is reflected in its mandate to assist survivors with their recovery from the consequences of Indian Residential School abuse. To ensure that survivors have access to healthcare services after their hearings, the IAP allocates up to \$10,000 for their Future Care Plans (FCPs) that fund “treatment, counselling, or traditional healing” (Indian Residential Schools Adjudication Secretariat n. d.). Upon initial

examination, survivors are invited, through their FCPs, to participate in what appears to be a blend of Indigenous-based and settler-inspired programs, access to which is contingent upon launching a successful IAP claim. The FCP directs a claimant's spending in a particular way and raises questions about what can legitimately count as healing. At the same time, because the IAP does not monitor the expenditure of the claimant's FCP funding, it represents an honour-based system. To this end, the FCP occupies a paradoxical space characterized by both individual autonomy that is often found in individual reparations and paternalist tendencies of settler colonialism.

The IAP reproduces the relations of domination through the *spirit and intent* of the FCP, which is visible in one of the adjudicator's comments: "'Oh this is ridiculous, why am I...this money is... ridiculous that we're awarding this money' because they assume the claimants never use the money for counseling or traditional healing" (survivor's words recounted in a personal communication with an Laura, IAP lawyer, 25 May 2016). The settler colonial logic of exceptionalism (Collins 2011) is made visible through the actions of the powerful and righteous lawyers and adjudicators who think they know what is best for survivors: "I would be a lot more comfortable if I could know that the money for their Future Care Plan was actually going to a Future Care Plan" (Richard, IAP lawyer, 4 July 2016). It constructs survivors as financially illiterate claimants who require assistance while simultaneously rendering the IAP adjudicators and lawyers as exalted and benevolent actors (Thobani 2007). In an interview with another IAP lawyer I learned about the paternalistic provisions of the FCP that require survivors to demonstrate that they will direct their FCP award toward what the adjudicator considers legitimate medical expense, which is not a requirement when settler Canadians receive similar care plans from the court:

The compensation for future care was basically unfair and unprincipled. In the courts you get compensated for what you need, you don't have to stand up in front of a judge and say, "Yes, I agree to spend it on this." *You can spend it on whatever you want.* So there was an unfair standard there (Frank, IAP lawyer, 24 August 2016, emphasis added).

This double standard reproduces settler discourses of tutelage and Indigenous tendency for self-destruction, which often inform representations of Indigenous people as children in need of protection and guidance.

Under the FCP model, the hierarchy of legitimacy in relation to healing is externally determined through a process that privileges the Western medical treatment options that are limited to the direct consequences of compensable acts of abuse, namely the sexual and physical abuse *for which survivors' IAP awards are issued*, rather than for what survivors themselves consider as harm. The "traditional healing" option that I had mentioned earlier appears to be an exception in my argument, but is this really so? From an interview with an IAP lawyer I learned that indigeneity is permitted to inform the IAP's "traditional healing" options only as long as it does not challenge the settler colonial status quo and corresponds to the European equivalent of healing discourses, such as an Indigenous healing program with a Western counseling element to it. In other words, the hierarchy of legitimacy is informed by Western expertise that gives legitimacy to indigeneity and creates a standard against which it is validated or disavowed, if necessary (Veracini 2011). In this regard, "traditional healing" services under the FCP represent tokenistic measures that are allowed to exist with the implicit goal of reinforcing the legitimacy of the biomedical institutions that give them their *raison d'être* in the first place. One lawyer recalls two separate FCPs – one unsuccessful and another successful – that differed in their accommodation of the Western healing discourses that determined the FCPs' success:

A guy wanted to basically go by himself back in the nature for a month and just reconnect, and so what he was asking for was the camping supplies and stuff like that to go into the wilderness for a month and sort of reconnect with his territory, and that was

not permitted. I had another fellow from the same area, this was a practice of theirs, who wanted to do that, but was going to take an Elder with him and that was allowed for future care because there would be a counseling element through his relationship with [the Elder]...so tried to shoehorn traditional practices into a Western European model and with varying degrees of success (Frank, IAP lawyer, 24 August 2016).

The underlying principles of the FCP operate based on the assumption that the Western biomedical model is superior to and more legitimate than the Indigenous healing model, which acts in a supplemental capacity at best. In this regard, the IAP positions the Western biomedical model as an integral part of settler colonial institutions that have the authority to determine the needs of survivors on their behalf (Alcoff 1991-1992). By participating in FCPs, claimants agree to abide by the rules set out by the legal and medical experts. They also accept, recognize as legitimate, and engage in Western biomedical practices for healing purposes. Once claimants receive their FCP funds, they can spend them on something entirely different than what they submitted as part of their FCP applications (Maria, IAP adjudicator, 15 June 2016). However, in order to receive them in the first place, survivors still have to build a compelling case that complies with Western understandings of healing and therapy.

Given the composition of the parties that negotiated the Settlement Agreement, which include primarily settler colonial actors and institutions, it is not surprising that the Western psychiatric model was established at the standard against which the legitimacy of the Indigenous healing model is measured. In fact, one significant compromise that was made by the key party to the negotiations, the Assembly of First Nations representing the interests of survivors, was to drop their position to hire Indigenous adjudicators and non-Indigenous adjudicators who received “First Nations community-based component” who had “medical/therapeutic experience” (Assembly of First Nations 2004:5).

The IAP draws on the expertise of trained medical professionals to position the status of the Western biomedical model at the top of the hierarchy of legitimacy, in which harm that is assessable and treatable by experts of Western medicine receives special recognition while other types of harm are discounted as trivial. To secure the superior status of the Western biomedical model, the IAP solicits the participation of psychiatrists who take on the role of powerful “transitional justice entrepreneurs” (Madlingozi 2010) who assess the harm done by the abuse, and whose tools include “psychiatric...reports necessary to determine whether harms at the H4 or H5¹⁵ level were caused by the act or acts” (Indian and Northern Affairs Canada 2006). In fact, survivors receive an additional \$5,000 “if treatment by a psychiatrist is required” (Indian Residential Schools Adjudication Secretariat n. d.).

Psychiatrists play an important role in structuring the narratives of victimization and victimhood by discursively representing certain types of harm as legitimate and by filtering survivors’ experiences through the gaze of Western biomedicine. Through FCPs, psychiatrists are established in the hierarchy of legitimacy as powerful agents who have the authority “to speak for or on behalf of victims” (McEvoy and McConnachie 2013) and to reproduce the settler colonial logic of exceptionalism by engaging in practices aimed “to teach, civilize and rescue the benighted, hapless victim” (Madlingozi 2010:210-11). Despite the established legitimacy of psychiatrists, one survivor disputed the hegemony of psychiatrists, arguing that their work denied the existence of harm unless it could be objectively verified using tools of biomedical assessment (Jeffrey, survivor, 1 August 2016). Another survivor noted that psychiatrists contributed little to the healing process: “Why do you want us to talk to a psychiatrist? We are going to get no

¹⁵ H4 and H5 level harms are the highest compensable harms under the IAP. I discuss them in greater detail in the Compensation Model chapter.

benefit out of it. Why can't you believe and give me the \$15,000?" (Matthew, survivor, 1 August 2016).

4.6 The hierarchy of losses: loss of income and loss of opportunity

In this final section I wish to accomplish two objectives. First, I conceptualize survivors as claimants whose compensable injuries are represented exclusively in relation to their loss of potential to make a contribution to the Canadian economy. In other words, the IAP commodifies survivor suffering by measuring and placing value on it in economic terms. The IAP constructs what I refer to as the "hierarchy of losses," in which legitimate losses represent commodified conceptions of what counts as compensable consequences of Indian Residential School abuse. Second, I explore the paradoxical nature of the IAP as a process that, through discourses of responsible expenditure of their IAP awards, simultaneously constitutes survivors as autonomous liberal subjects, on the one hand, and wards of the state, on the other (Coulthard 2014).

I develop the concept of the hierarchy of losses to evaluate the IAP's response to two specific types of impact: loss of opportunity and loss of income (Indian Residential Schools Adjudication Secretariat 2013b). *Loss of opportunity* relates primarily to the impaired ability of survivors to achieve education and training goals, as well as to secure employment as a result of abuse, while *loss of income* represents lost wages and employment resulting from injuries related to Indian Residential School abuse. Both types of losses relate to survivors' inability to contribute to the Canadian economy through gainful employment. I expand on Jennifer Henderson's research on the culture of redress in Canada to conceptualize survivors as liberal subjects who hold "developmental, entrepreneurial potential" (Henderson 2013:76).

While the IAP privileges the impact of abuse on survivors' employment and wage earning potential, the hierarchy of losses excludes consequences of harm that include assimilation as a direct assault on Indigeneity, loss of culture, language, traditions, parenting skills, and intergenerational trauma (Chrisjohn, Young and Maraun 2006). Here I would like to make two observations: first, the IAP reproduces the logic of elimination (Wolfe 2006) by disregarding the non-compensable consequences of harm and transitioning survivors to assimilation. Second, I conceptualize loss of opportunity and income as the synecdoche of Indian Residential School violence (Henderson 2013), which constructs survivors largely in financial terms and in relation to their entrepreneurial potential, therefore rendering invisible other types of suffering that survivors face. Loss of entrepreneurial potential and economic life-chances reflects the federal government's neoliberal discourses of Indigenous self-reliance and individual responsibility that represent some of the pre-conditions for settler colonial citizenship (Henderson 2002b; Alfred 2009a).

4.6.1 Discourses of fiscal responsibility in the IAP

In the remainder of this section I will focus on the paradoxical nature of the IAP: it is a product of competing forces that encompass conflicting qualities of paternalism and individual autonomy. The IAP is a paradox because its individual autonomy feature is often considered one of the hallmarks of individual reparations because it resists the paternalistic qualities that other types of reparations (collective reparations) may contain (Verdeja 2006). Notwithstanding the importance of individual autonomy, Posner and Vermeule (2003:727) develop an argument for carefully considering the socio-economic and cultural circumstances of the marginalized communities in which individual material reparations (namely financial compensation) are

implemented because of “the possibility that cash payments to individual victims may exacerbate the public health problem that the original injustice itself produced” (ibid). Posner’s and Vermeule’s argument is worth considering but it does not adequately address the issue of paternalism in reparations or the power relations between the colonizer and colonized, and this is the argument that I will now turn to. Paternalism in the IAP operates through discourse of “responsible spending” that the IAP administrators mobilize to recognize some forms of spending as legitimate while condemning others (Coulthard 2014).

The IAP administrators, particularly lawyers and adjudicators, often have a specific vision of “responsible spending” strategies in which survivors ought to engage, thus projecting a number of liberal discourses onto survivors that include fiscal responsibility, entrepreneurial tendencies, and capitalist economic orientation that guide survivors’ decisions on how to spend their awards. Responsible spending discourse individualizes violence and harm and narrowly defines survivors of the Indian Residential Schools, as well as ignores the impact of abuse on their communities. The IAP administrators constitute powerful “status-coaches”¹⁶ (Rock 2002:18) who engage in prescribing survivors with a number of social scripts and expectations regarding the expenditure of their IAP awards that subsequently determine the range of appropriate behaviours that provide frames of reference for survivors to “act like victims.” These scripts and expectations embody an ideology that survivors are required to internalize in order to comply with dominant settler colonial narratives of financially irresponsible Indians who need guidance from the benevolent, exalted, and righteous colonizers (Collins 2011; Thobani 2007).

The IAP represents a precarious space that, on the one hand, is designed to give survivors the freedom to choose how to spend their compensation payments, but on the other, it invokes

¹⁶ Paul Rock defines “status-coaches” as the totality of publically available social narratives that construct discourse of “how to be a victim” (Rock 2002:18).

discourses of responsible spending that attempt to “save” survivors from self-revictimization. These discourses are expressed in such ways that appear to have the objective to protect survivors from using their IAP payments to exacerbate the existing community-wide dysfunction for which settler colonialism is responsible: domestic violence, substance abuse, suicide, and many others. Responsible spending discourse poses several two double binds for survivors. The first double bind is that survivors are expected to be financially responsible with their IAP payments, when in reality many of them have never had any real money and financial training because the average Indian Residential Schools survivor has typically worked in a low paid profession (Episkenew 2009). Second, the IAP administrators, including adjudicators and lawyers, cannot legally tell claimants what to do with their money, yet many claimants themselves do not understand or trust settler colonial financial institutions to engage in fiscally responsible spending strategies. As a result, their IAP awards represent a high proportion of their annual income and most survivors do not have what is commonly known as appropriate levels of financial expertise and literacy to handle their money “responsibly” (Eric, leader of an Indigenous advocacy organization, 22 June 2016).

Discourses of responsible spending are often at odds with the socioeconomic realities of survivors of who reside in rural, remote, and northern Indigenous communities. Through its invitation to survivors to spend their awards in a particular way, the IAP makes two faulty assumptions. First, it assumes that survivors’ home communities have the necessary infrastructure to support a meaningful expenditure of payments. In reality, the availability of goods and services, especially in remote and northern Indigenous communities, are quite limited, in comparison to urban areas (Office of the United Nations High Commissioner for Human Rights 2016), which causes inequalities in relation to types of goods and services that the IAP

awards can be used to purchase. Second, the IAP assumes that the costs of goods and services are similar across Canada, regardless of survivors' geographical location, when in fact this is seldom the case. The IAP does not take into account the circumstances of remote and northern communities, in which money can be spent twice as quickly as in urban areas (Russell 2016). In an interview with a lawyer who often represented clients from northern Canada, I discovered that the IAP awards privileged the circumstances of survivors residing in urban areas:

People from remote areas were very, very disadvantaged. If an IRS survivor in Vancouver wanted counseling, they got \$10,000 for counseling. If an IRS student in some remote area of the country wanted counseling, they might get only 4 sessions or something because they had significant travel cost to access the care. Travel costs worked into the budget, so somebody in Vancouver might get 40 sessions and somebody in Carcross might get 4, you know. So there was a wide disparity in terms of what was available to people largely based on their locus (Frank, lawyer, 24 August 2016).

In cases of substantial financial IAP awards, a frequent concern among the lawyers and adjudicators is that survivors might cause themselves serious harm by spending their IAP awards irresponsibly or unwisely and that the quick expenditure of the IAP money represents a reckless financial move that “unsophisticated” claimants make (Sean, IAP adjudicator, 17 May 2016). Another lawyer noted that he “had a real fear the client would blow all the money in one go” (Richard, IAP lawyer, 4 July 2016), and yet another lawyer made a similar observation suggesting that a large lump sum compensation payment leads to “a lottery style problem, the money disappears. It’s gone” (Sarah, IAP lawyer, 8 June 2016). Notwithstanding legitimate concerns among the lawyers for the wellbeing of survivors, their attitudes toward survivor’ financial decisions embody the settler colonial logic of exceptionalism that survivors somehow need to be saved from themselves and that survivors should strive to be financially responsible citizens (Veracini 2011; Coulthard 2014).

Yet, as problematic as this logic may be, financial illiteracy in Indigenous communities combined with large sums of money consisting of IAP payments presents a dangerous combination that further dominates, oppresses, and disadvantages Indigenous people. Indeed, the IAP awards are designed to resemble payments resulting from civil litigation proceedings, which are intended for settler Canadians and not Indigenous people (Maria, IAP adjudicator, June 15 2016). In fact, claimants are typically left to their own devices after they receive their IAP awards, unless they request financial advice from their lawyers or RHSP workers (Linda, RHSP worker, 13 June 2016). Discourses of financial responsibility and financial planning are embedded in settler colonial ideals that are never achieved in reality, and yet Indigenous people are expected to opt into these discourses much in the same way that settler Canadians do by investing their money and saving it.

4.7 Conclusion

In this chapter I analyzed the IAP as a hierarchizing and ordering process. I explored how institutional legal power, which operates through professional duties of various IAP stakeholders, challenges and transforms the typology of “ideal” and “complex” victims in traditional critical victimological scholarship and gives rise to the category of the “difficult” victim. IAP stakeholders construct a hierarchy of victimization that is based on a Western legal framework that interpellates survivors with a particular set of qualities required to achieve victim status and perform it successfully at their IAP hearings. Successful presentations of victim status at the hearings involve a skillful navigation and management of qualities of both “ideal” and “difficult” states of victimhood. Lawyers and RHSP workers engage in various strategies that I conceptualize as performative labour that help survivor to negotiate the tricky terrain of victim

status. These strategies shape discursive representations of survivors' experiences of violence and invoke hegemonic narratives of victimization and victimhood, while at the same time privileging legalistic approaches to truth-telling.

As a profit-driven enterprise, the IAP gives the lawyers all the power to select cases based on their reasonable probability of success, which carries enormous implications for how the hierarchy of victimization victim status are constructed. By approaching victim status through the performative labour of Western medical professionals, my analysis explored their capacity to act as expert witnesses empowered by institutionalized knowledge required to construct what they consider evidence-based, objective, and legitimate discourses of healing and wellness. In its construction of discourses of victimization and victimhood, the IAP draws on institutional power to conceptualize the consequences of Indian Residential School abuse purely in relation to commodified narratives of financial loss and loss of opportunity, which disregards other types of harms survivors may consider legitimate. The narratives of fiscal responsibility play a central role in establishing the expectations with which survivors are invited to comply in directing their IAP awards, which are inspired by neoliberal narratives of financial management and prudence. In the next chapter I examine how the IAP represents a symbolically violent process that revictimizes and disempowers survivors.

Chapter 5: IAP as a symbolically violent settler colonial legal process

5.1 Introduction

In this chapter I explore the IAP as a structuring process that inflicts temporal and spatial violence, perpetuates settler colonial denial, and treats survivors' testimony, realities, and experiences with suspicion and skepticism. In particular, it invites survivors to participate in a compensation process that privileges culturally inappropriate conceptions of time and space, accepts the expert knowledge of external witnesses in place of survivors' interpretations of their own experience, and makes various attempts to absolve the architects of the Indian Residential School system of legal responsibility. My overarching argument is that the IAP draws on legal institutional power to cultivate a particular type of legal subject that occupies a liminal space defined by paradoxical qualities of assimilation, on the one hand, and subjugation and marginalization, on the other. It facilitates assimilation by extinguishing indigeneity and transforming survivors into subjects of Canadian law (Monture-Angus 1995), while at the same time disempowering and marginalizing them as stakeholders in the IAP. In more concrete terms, the IAP subordinates and suppresses the needs of survivors to accommodate the requirements of a Western legal compensation process.

I develop the concept of "temporal violence" that denotes a particular type of symbolic violence (Bourdieu 1979; 1989) that the IAP inflicts on survivors. Temporal violence establishes survivors in relation to unjust temporal legal standards by bringing their experiences and realities into existence only when it deems appropriate. My focus is specific to two areas of the compensation process: the IAP application process and hearing process. In my analysis I engage themes around the temporality of the application and hearing processes to examine the

competing legal discourses that the IAP mobilizes to structure survivors' subjectivities. In building my arguments, I explore an apparent contradiction in the IAP application and hearing processes: despite the widely held perception among IAP practitioners that the IAP was designed to protect and safeguard survivors' wellbeing, it revictimizes them by imposing temporal standards that further oppress, dominate, and disempower them.

One of the ways in which the IAP establishes survivors as subjects of Canadian law is by managing and regulating the conduct of Resolution Health Support Program (RHSP) workers. The IAP regulates the conduct of RHSP workers by enforcing a set of parameters related to communication between RHSP workers and survivors, which effectively sanctions the amount and quality of permissible contact at the hearings. The IAP prioritizes Western legal protocols, including privacy and confidentiality regulations, which protect the presumed purity and authenticity of survivor testimony, and override Indigenous cultural protocols and health support services designed to safeguard the wellbeing of survivors. In my discussion I consider the role of institutional power that privileges the work of legal practitioners who are permitted to enable, prohibit, and interfere with the provision of health and cultural support services to survivors.

The IAP inflicts symbolic violence on survivors by perpetuating the denial of Indian Residential School abuse. I build on Stanley Cohen's (2001) theorization of settler colonial logics of denial to situate the IAP as a symbolically violent process. I investigate how lawyers representing the Canadian government activate various technical legal arguments and mobilize the legal standard of proof, which consists of a balance of probabilities, to present Indian Residential School abuse as an exception to an otherwise well-functioning and responsibly run Indian Residential School system.

The IAP inflicts violence on survivors through its culturally inappropriate provisions that appear to revictimize, dominate, and marginalize survivors. It incorporates several elements of the domestic criminal court system, including the presence of lawyers and adjudicators, cross-examination of evidence, and the use of legal terminology, all of which contribute to the disempowering survivors and reproduce the unjust power relations that exist outside the IAP. As a highly technical and complex legal process, the IAP remains foreign to many survivors, who often find themselves puzzled by its court-like appearance despite its design as a “survivor friendly” and inquisitorial process that is often packaged as an attentive approach to the cultural and spiritual needs of survivors.

The highly legalistic structure of the IAP represents a violent process as it constructs knowledge about their experiences of abuse from sources other than their own testimony. Narratives of their experiences of abuse emerge from their encounters with settler colonial institutions that manifest in official medical and Indian Residential School records, as well as testimony of expert witnesses, including psychiatrists and medical doctors, to determine the validity and legitimacy of survivors’ compensation claims. The experts in the IAP are empowered by the Canadian legal system and have the authority to speak about and on behalf of survivors, which effectively positions survivors’ experiences as representations of competing yet complementary Western legal and medical discourses of what constitutes knowledge. In this process survivor testimony is treated with suspicion and skepticism and is considered a secondary source of information that is used to verify official sources of information and knowledge. To this end, the experiences of survivors are subjected to careful evaluation and assessment, akin to what Foucault (2003) refers to as the “medical gaze” that divorces the “suffering person from her sociological context and reframes her as a ‘case’ or a ‘condition’.”

which in the context of the IAP shapes the power relations between survivors and experts that mirror the relation between the colonizer and colonized.

5.2 The IAP as a temporally unjust process

The IAP inflicts a modality of symbolic violence on survivors in the form of temporal violence. Building on Pierre Bourdieu's (Bourdieu 1979; 1989) work and Paulette Regan's research on redress for Indian Residential School abuse, I theorize symbolic violence in the settler colonial context as the type of institutionalized and bureaucratic violence that "reinforces settler colonial power relations" (Regan 2010:116), as well as actively structures the experiences and realities of the dominated and oppressed. In this violent process, the IAP administrators – lawyers, RHSP workers, and adjudicators – are involved in governing and managing survivors through various systems of control that construct the IAP's temporal dimensionality and interpellate survivors with a series of temporal logics. Specifically, the IAP constructs temporal boundaries around the claims process with respect to claimant eligibility, application deadlines, and timelines around the IAP hearings. Successful claimants are expected to skilfully navigate the temporal labyrinths of the IAP, which are not designed specifically for Indigenous claimants.

5.2.1 IAP hearings as modalities of temporal violence

The IAP hearings are designed to process survivor testimony that flows according to a particular temporal sequence of events in survivors' life courses. However, in the course of a hearing, survivor testimony may become non-linear and display what is considered in the adjudication process as errors in logic. The IAP's temporal ordering and framing of survivor testimony invites them to participate in a process in which powerful adjudicators establish survivors as their

addressees. The IAP subordinates Indigenous conceptions of time that can often be circular and reversible (Tuhiwai Smith 1999), and overrides Indigenous cultural practices in which stories are “performed and re-performed, and, with each telling and re-telling a new layer is added, a new truth revealed.”

The process of soliciting survivor testimony unreasonably expects that survivors, who have only one chance to give their testimony, to be expressive *on command* and at the request of the adjudicator. These performative aspects of temporal violence of the IAP hearings operate through the adjudicator’s line of questioning to survivors that contains the implicit assumption that survivors have achieved a certain level of healing, that healing is linear, and that it follows Western temporal order of events. The law firms that represent survivors often give their lawyers only a single day to attend the hearing, which forces survivors to squeeze their testimony into a timeslot that is just long enough to disclose the relevant facts of the case or risk being rushed to submit their testimony. Viewed in this way, the timeliness of the hearing takes precedence over the emotional needs of survivors to disclose their experiences in their entirety, if they so wish, and to take the time they need during submission of their testimony:

And the reason why [lawyers] do that is because, “I’ve got a plane at 4pm so can we get this done by 2:30pm? I gotta get back to Toronto, Ottawa, I got more important things to do,” is what they’re saying. I’ve been to hearing that it was supposed to go for two days, when I get there, we’re finished at 2pm, it’s all done, that’s not a 2 day hearing (Joseph, RHSP worker, 4 July 2016).

The hearings call the Native into existence for a limited time and subsequently disavow his or her presence (Wolfe 2006), thereby constructing victim status in temporally bounded terms. The temporal boundaries of the IAP hearings are marked by their distinct beginnings and ends, which are reflected in the timeframes during which the IAP adjudicators actively listen to survivor’s experiences, or as one RHSP worker observes, “it’s not the lawyer’s day, it’s not the

adjudicator's day, it's your day" (Donald, RHSP worker, 14 May 2016). This process incorporates performative qualities insofar as the length of the hearing represents an encounter in which the colonizer expresses his difference against the colonized and asserts his power (Coulthard 2007).

Even though the IAP hearing is often marketed as "survivor's day," the irony here is that it really is everyone's day but the survivor's because the survivor is summoned at a hearing that is conceived, designed, and executed almost in its entirety by the legal system and its agents. Behind the veneer of assertions like "you're the boss today" (Michelle, RHSP worker, 11 May 2016), in reality survivors are able to control only a small number of variables at their hearings, including the frequency of the breaks they take and who they are able to invite to the hearing, yet one of the critical variables that remains beyond survivors' control is the flow of the hearing itself. In other words, once a hearing has started, survivors have little choice but to share their testimony or risk having their claim denied:

See that was one of the failings of the IAP system is when you walked in, ok, the general assumption is that, "Well, you're ready." A lot of people who went in weren't really ready...the assumptions is that this [survivor] is all ready to talk. He's not (Matthew, survivor and RHSP worker, 31 July 2016).

5.2.2 Temporal violence of the IAP application process

Much like the IAP hearing process, the IAP application process is also marked by bureaucratic violence (Graeber 2015). According to "Schedule D" of the Indian Residential Schools Settlement Agreement, the IAP determines eligibility in such a way that excludes claims of survivors who passed away before May 30, 2005, which "in some ways limited the catchment area because it excluded people, the estates of families, and people who would have died prior to that" (Steven, Anglican Church representative, 12 July 2016). Indeed, the May 30, 2005 deadline

by which claimants must have been alive in order to be eligible to launch an IAP claim is legalistic, artificial, and arbitrary. Similarly, the September 19, 2012 deadline to launch an IAP claim reflects violent tendencies insofar as it expects survivors to have mustered enough courage in order to make a decision to apply for compensation. As one IAP lawyer shared with me in an interview, most survivors were not emotionally prepared to file an application by the deadline:

Sometimes it's decades before people are prepared to talk about things. And so I knew of any number of people who decided not to come forward. And I suspect there were a lot more. I mean one indication of that is that we had 7,000 claims filed on the last day for accepting claims. In fact, half the claims in the IAP were filed in the last 3 months of that 5 year period, from 2007 to 2012 (Frank, IAP lawyer, 24 August 2016).

As a result, many survivors were rushed to comply with the deadline and to prepare themselves emotionally and psychologically to complete their applications. One RHSP worker who had worked with survivors to prepare them for their hearings as the application deadline loomed shared with me that the deadline posed the risk of exacerbating Indian Residential School trauma and revictimizing survivors. For many survivors, the deadline came up so suddenly that nothing could have prepared them for the emotional hardship associated with sharing their testimony: "a lot of them weren't ready to come in...they heard about the IAP process, and they signed up because they didn't want to lose out for it" (Kristin, RHSP worker, 5 July 2016). For some survivors, the act of sharing their testimony was one the one of the hardest things they have ever had to do in their lifetime, not least because the IAP was designed to accommodate the legal requirements of the perpetrator rather than to address the needs of survivors (Kevin, Andrew, and Susan, survivors, 18 May 2016, 29 June 2016; and 9 July 2016).

Temporal violence associated with the rush to meet the application deadline is also marked by extended periods of delays that survivors must endure that lead up to the hearings. Survivors are first notified of their hearings about three to five months in advance, which often

generates feelings of anxiety and apprehension in survivors (Linda, RHSP worker, 13 June 2016). After the hearing, some adjudicators are not satisfied with the factual content of survivor testimony and may request additional supporting documents to corroborate testimony, which may take a few months to a year (Matthew, survivor, 1 August 2016). Missing witnesses, invitations to alleged perpetrators who are willing to participate in the hearings, and adjudicator-ordered medical and psychological assessments may also cause further delays in the compensation process (Indian Residential School Adjudication Secretariat n.d.-a). After the hearings, many survivors typically receive their payments in a period ranging from several weeks to several months, while in more complex cases they may take up to a year (Joseph, survivor, 4 July 2016).

The text of the IAP Application Guide warns that it may inflict violence. On every page of the Guide there is the number to the “24 hour IRS Crisis Line” and “IRS Toll-Free Helpline,” as well as an entire page for “Information on Health Supports” (Indian Residential Schools Adjudication Secretariat 2013b), which signals that it may revictimize survivors by virtue of them reading the form. The Application Guide also cautions survivors that completing the application form “can be a very emotionally painful process” (Indian Residential Schools Adjudication Secretariat 2013b:7) and, in large font and bold letters, states that they should solicit counseling support to minimize the chances of being triggered by reliving their experiences of abuse that the Application Guide requires them to recall and write down on paper.

5.3 Governing survivors through the conduct of the RHSP workers

In the previous chapter I have argued that RHSP workers represented agents of the IAP who engaged in performative labour that discursively represented survivors as passive subjects of the

compensation process. Now I would like to explore how RHSP workers constitute disempowered actors whose role is managed and regulated by the more powerful agents – lawyers, adjudicators, and the IAP legal framework more generally. Although I consider the RHSP workers, lawyers, and adjudicators to occupy the role of powerful transitional justice entrepreneurs (Madlingozi 2010), their empowerment in the IAP is differentially established and maintained. In particular, the legal system privileges the work of IAP lawyers and adjudicators, who are the most powerful actors in the process, while RHSP workers are relegated to the margins and have little choice but to comply with the pre-existing rules or risk disciplinary action. In the matrix of domination (Hill Collins 2000), RHSP workers occupy a position that is just above that of survivors, which establishes them as vulnerable and marginalized actors, whose profession is subject to regulation by the lawyers and adjudicators. I consider RHSP workers more socially advantaged than ordinary survivors because they are typically more empowered and have achieved a higher level of healing than ordinary survivors that has helped them to overcome some of the obstacles associated with Indian Residential School abuse.

The IAP manages and regulates the conduct of RHSP workers by establishing protocols that dictate what they are permitted to do before, at, and after the hearings. Before the hearings, the IAP regulates the conduct of RHSP workers through its privacy and confidentiality provisions, which represent a double-edged sword. The RHSP workers receive very little information about the claimant, which includes the claimant's initials, gender, and location of the hearing. On the one hand, these provisions are designed to protect the identities of survivors by keeping them private until the day of their hearings. On the other hand, they do not readily allow survivors and RHSP workers to form a bond of trust in advance of the hearings. The RHSP workers typically learn the identities of survivors the morning of the hearing and the assumption

in the IAP is that survivors will trust their RHSP workers the minute they meet them. Such an arrangement is deeply problematic because it is nearly impossible for RHSP workers to establish a bond of trust with survivors on such short notice, which could disempower survivors at their hearings. Once survivors and their RHSP workers make contact, they are expected, but often are unable, to connect spiritually, emotionally, and culturally “5 minutes before the meeting,” which can contribute to the claimant’s feelings of discomfort at the hearing (Donald, RHSP worker, 14 May 2016).

The IAP restricts the role of RHSP workers to provision of health and cultural support to survivors, while sanctioning all other conduct: “the RHSP giving advice to the claimants, legal advice, and that was a no-no” (Pamela, RHSP worker, 15 September 2016). Indeed, the Settlement Agreement stipulates that RHSP worker adhere to their role of health and cultural support rather and make no attempt to “become distracted from that goal by seeking to become a participant in the proceedings” (Indian and Northern Affairs Canada 2006, Schedule “D”). In concrete terms, this protocol translates into practice when the legal professionals, namely the lawyers and adjudicators, prohibit the RHSP workers from speaking or interacting with survivors with the exception of breaks during the hearings. Over-regulation and vigilant sanctioning of the conduct of RHSP workers in the IAP may stem from the design of the IAP hearings that are modeled after domestic court proceedings that typically do not include support workers, which would partially explain why they are relatively disempowered and marginalized by the process, since their role has never been clearly defined.

IAP lawyers often accuse RHSP workers of coaching survivors on the content of their testimony. As one RHSP worker recalls, an IAP lawyer filed a complaint against her for “planting memories” in the mind of a claimant by showing him videos of other survivors sharing

their Indian Residential School experiences (Linda, RHSP worker, 13 June 2016). The lawyer's allegations stipulated that the survivor had adopted a series of stories from the videos supplied by the RHSP worker and plagiarized them in order to receive an IAP award. Ironically, it is accepted and common practice for IAP lawyers to coach their clients on what their testimony should contain and how to present it effectively to the adjudicator at the hearings. Therefore, it is not a question of purity and spontaneity of survivor testimony, but rather who is authorized to interfere with it. Such a disparity in empowerment points to the superiority and legitimacy of legal epistemology that draws its authority from Canadian law to define the appropriate conduct for RHSP workers and punish those who do not comply.

The IAP constructs what I call a "hierarchy of authority" that privileges the practices of trained legal professionals over those of the RHSP workers, who do not have the authority to assist survivors outside the scope of their assigned duties. The hierarchy of authority relates to Hill Collins's "matrix of domination" insofar as it exposes the hegemony of legal authority that elevates itself over the authority of RHSP workers that is defined by the intersections of cultural practices, indigeneity, and traditional healing discourses. Presumably, this protocol was designed with the objective to preserve the integrity of survivor testimony because survivors are considered to be their own best witnesses because "there are no other witnesses usually in [sexual abuse] cases, other than the survivor because sexual abuse does not take place in public" (Jennifer, IAP lawyer, 28 June 2016). Effectively, the IAP views any unlawful interaction between the RHSP workers and survivors as "tampering" with evidence that could compromise the credibility and reliability of survivor testimony.

The unequal levels of empowerment of the RHSP workers in relation to the lawyers and adjudicators render them unable to monitor survivors' wellbeing because the legal requirements

of hearing process supersede the authority of RHSP workers, even though “lawyers are not therapists and they do not clearly understand anything about traumatic memory, storage and retrieval” (Linda, RHSP worker, 13 June 2016). IAP lawyers, who hold unquestionable authority and settler colonial privilege to act as “exalted subjects” (Thobani 2007) have the power to construct RHSP workers as “Others” (Collins 2011) who, despite their marginalized social status as colonized, are untrustworthy, unscrupulous, and prone to “cheating the system.” One RHSP, survivor, and leader of a survivor advocacy organization explains that the power relations between the lawyers and RHSP workers have always been unequal: “our role at time was questioned by the lawyers, and you’d find that the RHSP workers along with the survivors were kind of marginalized, left on our own” (Matthew, survivor and RHSP worker, 13 May 2016).

The artificial separation and distancing of the RHSP workers from survivors at the hearings is troubling because it makes several assumptions in bad faith. First, it assumes that the truth and purity of survivor testimony is synonymous with survivors’ isolation from their health and cultural support services. In effect, the IAP attempts to preserve the integrity of survivor testimony at the cost of subordinating their cultural and health support needs at a time when they need it the most. Second, the IAP assumes that the RHSP workers cannot be trusted and they are somehow inclined to coach the survivors on how to secure a financial award, which denotes a trespass on the legal territory of IAP lawyers. The assumption of interference of RHSP workers in survivor testimony reflects the discourses of risk and uncertainty in the construction of discourses of proper conduct by establishing survivors as risk-prone subjects. Finally, the IAP assumes that survivors cannot be trusted because they will somehow be tempted to take advantage of the system in order to make a profit. As one RHSP worker shared with me, this stereotype is false because from her experience, survivors almost always tell the truth and “if

they were all lying, or making stories up, that's the best acting I saw in my whole entire life and they all deserve an Oscar or Academy Awards" (Michelle, RHSP worker, 11 May 2016). Such an assumption presents survivors in settler colonial stereotypes and narratives of Indigenous peoples as dishonest, lazy Indians who just want another handout from the government: "she's just another Indian who is faking an injury," as one survivor shared with me regarding her reaction to her rejected IAP application (Susan, survivor, 29 June 2016).

5.4 Denial of responsibility and liability

The IAP follows the civil standard of proof of evidential requirements that requires survivors to substantiate their claims of abuse, which contributes to the denial of responsibility that exonerates the Canadian government and churches. While the lawyers representing survivors make every effort to substantiate their claims by maximizing the credibility and reliability of testimony, the task of the lawyers representing the government and churches is to supply them with a legal defence. The IAP requires survivors to establish, on a balance of probabilities, that the abuse against them has, in fact, taken place. Survivors who cannot prove on a balance of probabilities that they have, in fact, suffered abuse and harm are denied compensation. The balance of probabilities standard is based on the assumption that the accused party is innocent unless proven otherwise. This assumption legitimizes and provides legal justification for the generalized disbelief of survivor testimony and is used to treat it with skepticism, suspicion, and ambivalence by assuming that they are not credible, truthful, or reliable witnesses of their own experiences. This method of evaluating testimony is culturally inappropriate because in Indigenous societies "to deny a true allegation is seen as dishonest" and "a denial of the truth and contrary to a basic tenet of their culture" (Aboriginal Justice Implementation Commission 1999,

“Justice”). I argue that the IAP embodies several logics of settler colonial denial of responsibility for Indian Residential School abuse.

The IAP perpetuates *literal denial* (Cohen 2001:7) by asserting that the abuse, unless confirmed through official documentation that is corroborated by testimony, did not take place. Survivors who fail to prove on a balance of probabilities that they suffered abuse are revictimized by the adjudicators’ decisions to deny compensation because it robbed them of official recognition and victim status. As one IAP lawyer noted in her interview, one of her clients attempted suicide because he was not believed at his hearing (Sarah, IAP lawyer, 8 June 2016). Much of the time, survivors do not realize that failing to produce evidence that supports their cases on a balance of probabilities is not synonymous with not telling the truth, but for them the consequences are virtually identical. Rather, it is the question of causation, which is difficult to prove if supporting documents, such as medical records and psychiatric assessments, are missing and survivor testimony cannot be corroborated.

Literal denial places the burden of proof squarely on the shoulders of survivors to show that they attended a recognized Indian Residential School (“Schedules E” and “Schedule F” of the Indian Residential Schools Settlement Agreement). However, many school records are incomplete or were misplaced by school staff, which caused some students to be excluded from the compensation process, unless they could produce a believable story as to why their names were not on the school records. Still, even if students could successfully prove that they had attended an Indian Residential School, they must also correctly identify the abuser in order to build a credible link between their admission records and the violence they experienced. The difficulty here is that the passage of time and traumatic memory may prevent survivors from correctly identifying the abuser, which counts against them at the hearing: “I remember the

incident but I can't remember the individual. And that's how I dealt with detaching" (Matthew, survivor and RHSP worker, 10 May 2016).

The Canadian government has also made attempts to engage in *implicatory denial* of responsibility by adopting a series of legal arguments that are often referred to as the "administrative split." Implicatory denial takes place when "there is no attempt to deny either the facts or their conventional interpretation" (Cohen 2001:8) and shifts the blame on someone or something else. The essence of the administrative split argument is that in the late 1960s the government separated the Indian Residential Schools into two entities: dormitories and teaching facilities. The federal government retained control of the dormitories while relegating the responsibility for the teaching facilities to the provincial governments. As a result, the abuse that took place in areas where the federal government no longer had jurisdiction was no longer compensable. In instances of implicatory denial that is inherent in the administrative split, the facts of abuse are not being denied, but the federal government is reluctant to accept responsibility because the violence did not fall into the appropriate settler colonial political discourses of victimization. Beginning in 2010, the IAP lawyers representing the federal government began to adopt the administrative split argument as a legal defense at the IAP hearings, arguing that if the abuse had not taken place in the federal government's facilities, it would not be compensable:

Nobody ever mentioned that in 2008 [during the early years of the IAP] and it was never in the IRSSA...and then all of a sudden the government introduces this administrative split clause, which was never discussed before. So a lot of people got really mixed up with that. And that's where the government had introduced where the survivors...fell into that category and then they were not compensated (Andrew, RHSP worker, 9 July 2016).

The IAP adjudicators have often accepted the federal government's lawyers' interpretation of jurisdiction over the operations of the Indian Residential Schools, therefore rejecting survivors'

claims of abuse (Indian Residential Schools Adjudication Secretariat 2017). In deploying this technical legal argument, the federal government engaged in what McGarry and Walklate (2015) refer to as the “politics of victimhood,” which represents a process that grants victim status to some survivors while denying it to others on political grounds. It was only recently, in February 2017, that the federal government completed a review of the cases affected by the administrative split and agreed to reopen the 174 claims in which compensation was reduced or denied in previous years (Galloway 2017).

The federal government also engaged in implicatory denial by disputing its liability for abuse that took place on school property that was *under the jurisdiction of the federal government*. First, it did so by adopting a strict interpretation of the clause that in order to be compensable, the abuse must have occurred on the school premises (Indigenous and Northern Affairs Canada n. d.). In their defenses, the government lawyers adopted literal interpretation of the phrase “on the premises” to disqualify claimants, which caused spatial violence against survivors because it denied the intent of Indian Residential School staff to commit abuse. For example, one IAP lawyer informed me that his claimant was denied compensation because she was abused outside the school property:

I had a case where a young girl was raped in an igloo-type structure that the kids had built, it was against one building, which was the building beside the residence, but not the residence itself. And so physically, it was located mere feet, maybe 5-10 feet, maybe as little as 3 feet, doesn't matter, it was on the wrong side of the property line, she was denied compensation because of that. If that rape had occurred 10 feet to the west, she would have had \$150,000-\$200,000 in compensation. People on boats that were already under the care and control of the churches or the government, on the river, for example, were raped en route and because that was considered...or abuse, doesn't have to be rape per se, that was considered not on the premises, they receive zero compensation (Mark, IAP lawyer, 6 July 2016).

The government lawyers used tactics of interpretive denial to defend the actions of Indian Residential School employees, including doctors and nurses, who abused former students. One

such argument includes denying the intent of the violence and condoning the severity of harm it inflicted. As one Winnipeg lawyer shared with me, the federal government often denied responsibility for sexual abuse because it argued that inappropriate touching of a student must necessarily be of sexual nature in order to “exceed recognized parental contact” and to fall under the compensation rules (Jordan, IAP lawyer, 25 August 2016). Such an argument is culturally insensitive and intellectually dishonest toward survivors because it assumes that the standards of parental contact of non-Indigenous parents are superior to and more legitimate than those of Indigenous parental practices and therefore discredits survivors’ subjective experiences and installs liberal subjectivities in their place.

5.5 IAP as a culturally inappropriate process

The IAP represents a culturally inappropriate process whose founding principles and values delegitimize and subordinate indigeneity in favour of maintaining and reproducing the oppressive relations between the colonizer and colonized. In this respect, the IAP is complicit in disempowering and marginalizing survivors (Wolfe 2006; Coulthard 2007) and represents a legal instrument that is incompatible with Indigenous cultural legal practices. My argument raises questions around the design of the IAP that was envisioned as a survivor-friendly, informal, inquisitorial, and quasi-judicial hearing process, and yet in reality it was inspired by elements of civil law, whose fundamental principles contradict and supersede Indigenous principles of justice and philosophies of restoration and holistic healing by perpetuating settler colonial denial that inflicts violence (Melton 2005).

First, it is important to consider the question of how exactly the IAP is a culturally inappropriate process. From my interviews, I have learned that Indigenous people have

traditionally employed non-legalistic measures to deal with conflict: in “Indigenous cultures people don’t sue each other” (Matthew, survivor and RHSP worker, 14 May 2016), whereas the IAP operates based on a finding of guilt and blame that results from legal action. The complex litigation-based model of the IAP is further complicated by the fact that it is a system where the state is the guilty party liable for compensation, which represents both the perpetrator of violence and carries power to dispense justice (Gibbs 2009). For one survivor, such an arrangement has resulted in a partisan process in which there is a glaring conflict of interest where “everything was internal: judge, jury, and executioner” (Gary, survivor, 17 May 2016).

For other survivors, the IAP represents a process that embodies legal power that is both intimidating and overwhelming. Indigenous conceptions of power are drastically different from Western legal positivist doctrine of power that comprises the legal foundations of the IAP. Indigenous conceptions of power are based on horizontal community structures that often encompass relational accountability, and decisions are made within community networks. Indigenous conceptions of power are interactive, dialogical, and conversational in nature, and are based on sacred knowledge and wisdom of Elders. In contrast, Western conceptions of power are constructed in a vertical, top-down manner and signify what is sometimes referred to as a “power-over” approach that enforces a particular system of laws and imposes an authoritarian set of legal norms on its subjects (Zion 2005). Considering the profound differences in Indigenous and Western conceptions of power, survivors often feel threatened by the adversarial adjudication process of the IAP:

Even though this is supposed to be a non-adversarial approach, some survivors still felt threatened by the process. It was still very legalistic in nature. And so having said that, the court system is very foreign to First Nations people, and it’s foreign in a way that they don’t understand it, right? And so likewise, even though the IAP process is supposed to be less adversarial, and more friendly, many people still felt threatened by it (Michael, survivor, 17 June 2016).

The IAP is inspired by a civil litigation model that “isn’t engaged in the process of making people whole, it’s engaged in the process of cutting cheques” (Sean, IAP adjudicator, 18 May 2016). The complexity of the IAP and its incompatibility with Indigenous cultural practices have given rise to a compensation process that remains completely out of touch with the lived realities of many survivors, and it especially disadvantages survivors who choose to represent themselves (“self-represented clients”) at their hearings: “a lot of our people had no clue what the IAP was, and as a consequence when they were signing up and people were coming in and they were signing up, there was a lot of fear, a lot of apprehension, a lot of misunderstanding” (Matthew, survivor and RHSP worker, 11 May 2016). Notably, even though the IAP hearing contains a limited set of traditional Indigenous cultural elements that supposedly empower survivors, such as an opening prayer, a smudge ceremony (which was often canceled due to fire regulations in the hotels where the hearings were held), and affirmations by an eagle feather or tobacco, they remain secondary in importance to the legal elements of the hearing. In the IAP, indigeneity is called upon and recognized as such only insofar as it does not interfere with the legal requirements of the IAP that simultaneously asserts its superiority and displaces indigeneity (Coulthard 2007). By providing a set of culturally appropriate concessions to survivors and by marketing itself as a survivor-friendly process, the IAP engages in the politics of recognition and accommodation that reinforces the neutrality of the status quo and maintains a “particular system of privilege” (Mamdani 1998b:14).

In the process of establishing survivors as the settler colonizer’s “Others” (Thobani 2007), the profit-driven model of the IAP (as I explored in the previous chapter) played a major role by perpetuating the confusion among prospective claimants. The compensation model incentivized IAP lawyers to solicit as many clients as possible without fully explaining the

process to them: “they were like vultures, really, you know, they were calling survivors and didn’t know who was what and...[the health support helpline] was getting calls from all over the country asking what was going on” (Matthew, survivor and RHSP worker, 12 May 2016). The IAP represents a compensation process that despite its survivor-centred appearance treats survivors as outsiders and strangers, many of whom are not informed about its purpose and intent: the IAP “was basically [designed] by lawyers...through the negotiations process, and as a consequence, people on the ground, like the survivors, not too many of them knew the workings or how it was created, the end result” (Matthew, survivor and RHSP worker, 14 May 2016). This lack of understanding has had some serious consequences for survivors who attended the IAP hearings, including anxiety and emotional distress, lack of sleep, and severe apprehension in response to facing a legal environment in which power and authority structured the interaction between the survivor and IAP administrators and actors, much like they did between survivors as former Indian Residential School students and their staff who held power and authority over them (Anna, RHSP worker, 5 August 2016). In fact, the IAP constitutes survivors as children, who often defer to their lawyers as parents for permission to speak at their hearings: “Well, after [the adjudicator] asked me a question, ‘Is there anything you want to add?’ And I said, ‘Can I ask my lawyer something?’ And I was allowed to do that. And then the lawyer was allowed to speak on my behalf” (Kevin, survivor, 18 May 2016). Viewed in this way, IAP hearings disempower survivors, rob them of voice, and instill insecurity, all of which enable paternalistic tendencies that allow powerful actors to make decisions for survivors or on their behalf. The relations between adjudicators and survivors also resemble parent-child relationships when survivors feel powerless to make the simplest of requests to the adjudicator, such as to pause their hearings in

order to take a bathroom break or to ask for food, water, or Kleenex, and rely on RHSP workers to speak on their behalf.

The IAP's resemblance to the domestic criminal court process revictimizes survivors because it interpellates them as defendants and reminds them of the retributive justice model. This is a legitimate concern among survivors considering the fact that the Canadian legal system is premised on discriminatory provisions that criminalize Indigenous people who are over-represented in Canadian correctional institutions (Cunneen 2014). Indeed, in their home communities, the only other contact many survivors have had with the criminal justice system prior to their IAP hearings was when they participated in court proceedings *as defendants*, rather than as witnesses, and therefore they tend to view the IAP through the adversarial lens. In the IAP, survivors often find themselves threatened and anxious because of concerns that their experience in the IAP will be similar to a court-based process in which they are cross-examined by the prosecutor who will subject their testimony to legal scrutiny with the goal to challenge or discredit their version of events. This fear often leads survivors to withhold their testimony from the IAP adjudicator. In many cases, survivors are rightfully cautious of the IAP as some hearings involve indirect cross-examination of evidence: "the adjudicators would grill survivors" with disbelief in an attempt to test their memory (Matthew, survivor, 16 May 2016). Although the adjudicator is the only person at the hearing who is authorized to question the survivor, other powerful actors, including government lawyers, have the authority to cross-examine the evidence by making a request through the adjudicator. The lawyers have the authority to determine whether survivor testimony complies with the rules of evidence:

After a while, the adjudicator has to make their own decision that they're satisfied with what the claimant is saying. It's subject to the Department of Justice lawyer, Canada will say "No, no, I think I need more...I don't think they're really telling" whatever, and then

it becomes a cross-examination by proxy (Matthew, survivor and RHSP worker, 16 May 2016).

It comes as no surprise that the formality of the hearing environment and evidentiary rules have led many survivors to be revictimized by the same process that is often marketed as therapeutic and restorative (Bay 2013).

I would like to suggest that survivors' apprehension toward the IAP may in part be explained by the legacy of institutional violence against Indigenous people. Frantz Fanon's (2005) concept of the "psycho-affective" attachments to colonialism is particularly relevant here because it highlights how the colonized may internalize their inferiority and oppression in relation to settlers. Historically, settler colonial institutions have left Indigenous people largely dispossessed, oppressed, and dominated. As a result, in the IAP survivors' identities as defendants and accused have been made so permanent through their interaction with the law outside the IAP that many survivors are not able to comprehend a set of circumstances under which they are not on trial and are not the indicted parties:

The only thing we knew about law was if you get drunk and pick up a beer bottle, and you throw it through this windshield, and you break it, the cops are going to come and you're going to go to jail or fined. We understood the whole delivery and the regime of criminal law, so as a consequence, a lot of the times when our people end up going into a hearing, even though an IAP adjudication hearing, is that...that was one of the things we had to talk to [claimant's name] was that he wasn't on trial. He wasn't in court and he wasn't the guilty one (Matthew, survivor and RHSP worker, 31 July 2016).

5.6 Survivors as secondary sources of information in the IAP

In the IAP, institutional records and expert knowledge discursively represent the experiences of survivors and regulate access to victim status. They construct narratives of victimization and victimhood through which survivors' experiences of abuse are processed, articulated, and filtered. Institutional records and expert knowledge constitute sources of information that survivors are

required to gather as part of their IAP applications to support their testimony. Expert witnesses are called upon to validate survivors' experiences and to testify to the legitimacy of their claims, while institutional records are gathered to verify factual data, such school attendance and loss of income. What unites these two sources of information is that they both construct survivors as passive witnesses of their own experiences who represent objects of legal inquiry from which adjudicators extracts information, rather than as testifiers and active agents who have voice and are capable of addressing an audience through their own narratives of victimization (Ahmed 2014).

5.6.1 Mandatory documents as primary sources of information about survivors' experiences

As survivors and their lawyers prepare their IAP applications for the hearings, they must perform the concurrent task of securing the relevant supporting documentation, commonly known as "mandatory documents," to substantiate their claims (Indian Residential Schools Adjudication Secretariat 2013b). These may include medical records, social assistance records, employment records, education records, and police and correctional facilities records. As one lawyer explained to me, the purpose of mandatory documents is to develop a comprehensive history of claimants and the impact that the abuse has had on them (Frank, IAP lawyer, 24 August 2016). The process of collection of mandatory documents raises questions in relation to how they represent survivors and on what terms. It is an important process to consider because it is an essential component of the legal research that prepares survivors for their IAP hearings and regulates the realms of what is sayable, justiciable, and compensable (Madlingozi 2010). Mandatory documents in the IAP reinforce the relations of domination between the adjudicators and survivors by extending an invitation to survivors to comply with the terms and conditions set

out by the legal system or risk having their claims denied.

How exactly do mandatory documents construct the survivor? I draw on the work of McEvoy and McConnachie (2013) to argue that these institutional practices constitute powerful tools that essentialize and individualize survivor trauma and engage in discursive representations of their voices as subjects of Canadian law. In effect, mandatory documents order the experiences of survivors by privileging the experiences of those who suffered “legitimate” consequences of abuse and the “right kind” of harm that required them to be documented by the appropriate institutions. In this process, mandatory documents emphasize certain life experiences of survivors and discard others, and structure victim status in such a way that renders certain acts of violence justiciable while ignoring those that cannot be readily calculated and financially compensated. One lawyer shared with me that his mandatory documents included records from a community clinic to demonstrate that his client experienced a number of harmful consequences as a result of the abuse: “I was able to go through it in great detail and show, you know, all the self-harm, severe alcohol abuse, and suicidal ideation” (Richard, IAP lawyer, 4 July 2016). To this end, mandatory documents represent an objective measure of harm and speak to the impact of the physical and sexual violence exclusively in reference to institutionalized conceptions of what counts as abuse and harm, and such a conception is inherently narrow and limiting.

The lawyers and adjudicators use mandatory documents in the IAP to construct a particular set of representations of the impact of the abuse on survivors’ life courses. When a survivor launches an IAP claim, an appropriate medical record from a healthcare professional, such as a medical doctor, must be produced and dated with the time of the incident, which supports the severity of the abuse and resulting harm being claimed (Sean, IAP adjudicator, 18 May 2016). However, if there had been no doctor at an Indian Residential School that the

survivor had attended, then his or her claim remains unsubstantiated and the credibility and reliability of testimony is compromised. Viewed in this way, mandatory documents speak directly on behalf of survivors: the IAP adjudicators tend to believe the information contained in the mandatory documents more so than they believe survivor testimony, and the absence of supporting documents can compromise the integrity of the claim because such evidence is considered to be objective, independently verified, and corroborated by the authorities (Sarah, IAP lawyer, 8 June 2016). In effect, mandatory documents are authorized to speak *in place* of survivors (Spivak 1988) and the conversation takes place between the adjudicator and mandatory documents and not between the adjudicator and survivor.

5.6.2 Expert witnesses as gatekeepers of legitimacy

In addition to mandatory documents, survivors' claims are also subject to validation and verification by expert witnesses. Knowledge about survivors' life experiences is generated in part by actors with various types of expertise (for example, medical) and overrides survivors' interpretations of their experiences. It is carefully selected to produce discursive representations of an "encounter between the victim and expert [that] reproduces relations of inferiority and superiority" (Madlingozi 2010:213). The encounter between survivors and external experts is marked by unequal power relations that reinforce the disempowerment of survivors and encourage a lack of agency, which in turn presents the opportunity for external actors to speak for and about survivors and construct survivors as "subaltern subjects" (Spivak 1988). External experts reproduce the power relations that already exist between IAP lawyers and survivors, which are rooted in the assumption that "their clients never know as much as they do, never ever" (Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016).

Much like the mandatory documents, the opinions of expert witnesses construct survivors as passive participants in the IAP. Western scientific and institutional structures reinforce expert knowledge as a conduit of settler colonial power through which the IAP reproduces the relations between the colonizer and colonized. Western expertise and knowledge in the IAP are recognized as legitimate and unquestionable qualities that radiate from settler colonial privilege (Thobani 2007) and have the ultimate authority to singlehandedly validate or dispute survivor testimony.

The fate of an IAP claim often rests in the hands of experts who draw on institutional power to make assessments regarding the claim's legitimacy and validity. If an expert makes a determination that a survivor did not suffer serious abuse and harm, his or her expert opinion will take precedence over the survivor's:

You may have a doctor who then finds that, “No they wouldn’t have hospitalized the child and they wouldn’t have done anything about that, they wouldn’t have done any kind of medical treatment for that child,” or the doctor may say “There’s no long term physical impairment” (Sarah, IAP lawyer, 8 June 2016).

Some survivors wonder why the opinions of experts outweigh their testimony: the adjudicator will often accept the expertise of the medical professional who can speak for or on behalf of survivors, yet the adjudicator will not believe the stories of abuse that come directly from survivors (Susan, survivor, 29 June 2016; also Brian, survivor, 29 July 2016). One possible explanation is that the medical professionals, who are considered a “third party” in the IAP proceedings, supply neutral, objective, and dispassionate knowledge that reports on the condition of survivors’ bodies and minds “in an unbiased way” (Eric, leader of an Indigenous advocacy organization, 22 June 2016).

In the IAP proceedings, psychiatrists are often asked to evaluate survivors’ applications by investigating the validity of their claims of serious psychological harm, which requires them

to testify to the extent of the consequences of the abuse. Such an assessment requires the expert witness, typically, a psychiatrist, to construct survivors exclusively in terms of and in reference to *compensable* acts of abuse and therefore tends to overlook the broader impact of harm on their lives, creating what Spivak (1988) refers to as “the historically muted subaltern subject.” As one RHSP worker noted, the work of a psychiatrist renders non-compensable experiences of survivors irrelevant and trivial, because it is concerned only with extracting the elements of acute and visible violence while disregarding the entirety of their experiences: survivors are “there for 1 or 2 hour visit and that [the psychiatrist] must be one miracle worker because they will give a report as to the depth of the harm of that person. In one visit” (Michelle, RHSP worker, 13 May 2016). Indeed, as one survivor recalls, at his encounter with a psychiatrist he was asked to measure and report on his level of pain resulting from the abuse:

[Psychiatrist asked:] “What about...what would you rate pain? 1, 2, and 3.” I said, “You want me to tell you how it hurts? Even a short one hurts as long as a big one. They’re both deadly. It doesn’t matter how short it is or how long it is. It’s still the same pain and it triggers a lot of animosity, hatred. And I have a lot against people of your race,” that’s the way I kind of put it, you know (Jeffery, survivor, 31 July 2016).

Sherene Razack’s (2007) expression “stealing the pain of others” presents a useful analytical tool through which one could begin to evaluate the practices of measuring and categorizing survivors’ pain. Notably, in Razack’s analysis the actors who steal the pain of victims are benevolent and “progressive interlocutors, infused by moral outrage at past abuses and a genuine empathy for the plight of victims” (McEvoy and McConnachie 2013:498), whereas in the IAP the medical expert is an objective and dispassionate agent of the state who holds constitutive power to grant or deny the recognition of victim status. I argue that rather than stealing the pain as Razack proposes, experts in the IAP *transform* pain into manageable and intelligible parcels of information. Interestingly enough, after the psychiatrist above asked the

survivor about his level of pain in the quotation above, the survivor challenged the scope of the question and proceeded to expand the clinical interpretation of other types of violence, racism, and harm he experienced. As jarring as his response may have seemed in challenging the limited reach of the IAP, it descended upon deaf ears because the primary task of the psychiatrist was only to rate the impact of the abuse in a standardized form and to supply her assessment to the adjudicator, which means that the survivor's contestation of institutionalized power had little effect.

In addition to medical experts, other trained professionals that include interpreters who discursively represent survivors' experiences by translating their testimony from Indigenous languages into French or English, and this process cultivates a particular legal subject. Despite the absolute necessity of providing translation services at the hearings, for some survivors the disadvantage of translation is that it sometimes prevents them from speaking for themselves at their hearings and sharing their testimony directly with the adjudicator in their own words. Upon learning that the adjudicator was unable to understand them in their native languages, survivors were sorely disappointed because their testimony, which was deeply personal, would have to be shared with yet another stranger:

Some people are really put off by the fact they can't speak for themselves, they have to go through an interpreter, and they didn't want an interpreter in the room, they don't want other people, they don't trust even within their own communities perhaps, that their story would be discussed, and that's incredibly important (Sarah, IAP lawyer, 8 June 2016).

The issue of trust in translation services at the IAP hearings is complicated by the fact that the vocabulary of legal terminology in the IAP is not entirely compatible with Indigenous languages.

Translation of testimony is an especially challenging task for the aging survivors:

Some of these words don't translate very easily, some of these things don't even have words in Cree, like there are many sexual terms that have no Cree word, because it's not talked about. Not discussed. So you had to find people who could explain, you know

when you're sitting with a 75 year old Elder who...doesn't understand any of these words in English and they're trying to describe what it is that was done to their bodies or to themselves, it's a very delicate issue, right? (Sarah, IAP lawyer, 8 June 2016).

As a result, survivors have little choice but to filter their stories through a Western legal vocabulary and to interpret their Indian Residential School experiences in a way that satisfies the legal requirements of the IAP. Viewed in this way, the process of translation carries a larger meaning than what may initially appear: it is about power. By requiring survivors to speak about their abuse using the vocabulary of the colonizer, the linguistic qualities of survivor testimony are transformed from their original form, by way of coercive force, into a legal framework that is foreign to them, through which the IAP imposes a *unilateral* interpretation of events that entrenches the relations of dominance between the colonizer and colonized.

5.7 Conclusion

In this chapter I explored how the IAP manages and governs the conduct of survivors through various practices, including soliciting expert knowledge, constructing temporal boundaries around the application and hearing process, and restricting the role of the RHSP workers. The IAP constitutes a culturally inappropriate process that revictimizes, intimidates, and disempowers survivors. It withholds justice from survivors by providing the perpetrators with a range of legal defenses that protect them from legal responsibility for the abuse and places the burden of proof on survivors to demonstrate that the abuse did, in fact, take place within the narrow legal parameters of the IAP. At the hearings, the testimony of expert witnesses and institutional records are treated as primary sources of information about survivors' experiences and are used to confirm and verify survivor testimony, which occupies a peripheral space in the IAP. In the next chapter I explore the IAP compensation model, how it determines victim status,

and how victimization and victimhood are calculated and interpreted through a point system designed to assign financial value to the sexual and physical violence and its consequences.

Chapter 6: The IAP compensation chart and transvaluation of violence

6.1 Introduction

In this chapter I analyze the IAP compensation model (commonly known as the “compensation chart”) through the theoretical lenses of individual material reparations and settler colonial studies. The objective of this chapter is to generate an analysis of the compensation chart as a discursive tool that engages in representations of survivors’ experiences of Indian Residential School violence. I evaluate the compensation chart as an instrument that transvalues abuse and consequential harm for money and consider the roles of the most powerful IAP stakeholders – lawyers and adjudicators – who mobilize the compensation chart in their interpretation and reinterpretation of compensable violence in relation to discourses of victimization and victimhood. The chart represents an outcome of negotiations between various parties to the *Settlement Agreement*, and reflects the priorities of the most powerful party – the government – that sanctioned sexual and physical abuse as compensable categories of violence, and it did so at the expense of other types of abuse, such as loss of languages and cultures, forced starvation, prolonged confinement, and even the use of an electric chair as punishment (Canadian Broadcasting Corporation 2017).

The compensation chart (Figure 1, below) is comprised of several categories of wrongful acts and corresponding harms. It assigns points based on a scale that measures the perceived severity of violence and consequential harm. The construction of abuse and harm in the chart privileges the adjudicators’ subjectivity and places all the power in their hands to make decisions about how much survivors have suffered. Survivors, in turn, are expected to “perform” dysfunction in front of the adjudicators and “act out” Western narratives of victimization and

victimhood outlined in the chart in order to receive a financial award. Its categories of wrongful acts and consequential harm comprise an instrument of meaning making that offers survivors a limited vocabulary of tools to interpret their experiences of abuse. After the hearing, the adjudicator adds up the points and uses the total number of points to determine the corresponding amount of compensation, which is a process that I conceptualize as proportional transvaluation.

I problematize proportional transvaluation of abuse and harm because it individualizes violence, confines the understanding of harm to the mind and body of survivors, and selects only the violence that is justiciable under the Criminal Code of Canada and tort law, thereby trivializing and rendering nonjusticiable other types of violence that survivors may have suffered. The chart's approach to proportional transvaluation challenges the traditional framework of individual reparations. In particular, it divests money of its symbolic value that could be used to acknowledge that child abuse, no matter the severity, is wrong.

I frame my analysis around the argument that the compensation chart prioritizes narratives of acute, visible, and extraordinary violence and denies survivor subjectivities, realities, and experiences that may not comply with the official interpretations of violence. In its construction of compensable injuries, the chart often relies on the expert evidence of “‘psy’ professionals” (Smart 2002), such as psychiatrists, whose knowledge plays an important role in structuring the hierarchy of violence and harm. The chart inflicts symbolic violence on survivors by marginalizing and disempowering them and channeling the totality of abuse through a narrow legal framework that filters and simplifies the reality of the Indian Residential School experience. In this respect, the chart speaks for and on behalf of survivors to structure their experiences of victimization in a particular way, and in doing so, inflicts bureaucratic violence (Graeber 2015) on survivors. Bureaucratic violence of the chart functions by restricting the

expression of the lived realities of survivors, silencing their voices, and confining their experiences to a series of forms containing a range of pre-selected options that do not necessarily reflect the substance of the Indian Residential School experience.

6.2 The IAP compensation chart and transvaluation of violence for money

Despite the extensive efforts to theorize financial compensation measures in the reparations literature, the questions remain: How does ongoing settler colonialism complexify financial compensation? How does financial compensation value and transvalue the acts and injuries associated with Indian Residential School abuse? And, how do survivors engage in meaning-making practices in relation to their IAP awards? In order to begin the discussion, it is worth first considering the relevant parts of the IAP compensation chart that constitute central features of the IAP Application Guide, which will guide my subsequent analysis. The first part of the compensation chart is comprised of a table titled “Compensation Rules” that contains seven categories of abuse and a description of each category under the heading “Acts Proven” (Figure 1). The title “Acts Proven” carries social significance as it engages in various settler colonial logics of denial that I describe earlier in my dissertation, individualizes violence by divorcing it from its structural origins, and hierarchizes it according to Canadian legal standards.

Figure 1 (source: “Guide to the Independent Assessment Process Application,” <http://www.iap-pei.ca/forms-fs-eng.php?act=iap-guide-v3.3-20180312-eng.php>)

II: Compensation rules		
Level	Acts Proven	Compensation Points
SL5 Sexual Abuse Level 5	<ul style="list-style-type: none"> Repeated, persistent incidents of anal or vaginal intercourse. Repeated, persistent incidents of anal or vaginal penetration with an object. 	45-60
SL4 Sexual Abuse Level 4	<ul style="list-style-type: none"> One or more incidents of anal or vaginal intercourse. Repeated, persistent incidents of oral intercourse. One or more incidents of anal or vaginal penetration with an object. 	36-44
SL3 Sexual Abuse Level 3	<ul style="list-style-type: none"> One or more incidents of oral intercourse. One or more incidents of digital anal/vaginal penetration. One or more incidents of attempted anal or vaginal penetration (excluding attempted digital penetration). Repeated, persistent incidents of masturbation. 	26-35
PL Physical Abuse	<ul style="list-style-type: none"> One or more physical assaults causing a physical injury that: <ul style="list-style-type: none"> led to or should have led to hospitalization or serious medical treatment by a physician caused permanent or demonstrated long-term physical injury impairment or disfigurement caused loss of consciousness broken bones caused a serious but temporary incapacitation requiring bed rest or infirmity care of several days. Examples include severe beating, whipping, and second-degree burning. 	11-25
SL2 Sexual Abuse Level 2	<ul style="list-style-type: none"> One or more incidents of simulated intercourse. One or more incidents of masturbation. Repeated, persistent fondling under clothing. 	11-25
SL1 Sexual Abuse Level 1	<ul style="list-style-type: none"> One or more incidents of fondling or kissing. Nude photographs taken of the Claimant. The act of an adult employee or other adult lawfully on the premises exposing themselves. Any touching of a student, including touching with an object, by an adult employee or other adult lawfully on the premises which exceeds recognized parental contact and violates the sexual integrity of the student. 	5-10
OWA Other Wrongful Acts	<ul style="list-style-type: none"> Being singled out for physical abuse by an adult employee or other adult lawfully on the premises which was grossly excessive in duration and frequency and which caused psychological consequential harms at the H3 level or higher. Any other wrongful act committed by an adult employee or other adult lawfully on the premises which is proven to have caused psychological consequential harms at the H4 or H5 level. 	5-25

The chart contains five categories of sexual abuse (SL1 through SL5), one category of physical abuse (PL), and one category of “Other Wrongful Acts” (OWA). Curiously, the category of physical abuse is constructed predominantly in relation to potential harms that are associated with physical assault, and in the process fails to define the act of physical assault, which is the purpose of this chart. For each category of abuse there is a corresponding range of points assigned, and the number of points increases with the perceived severity of abuse, with the SL5 being the highest. In other words, the most serious, repeated, and persistent acts of sexual

violence receive the highest number of points, followed by acts that are considered less serious and are thus assigned fewer points. The second part of the compensation chart consists of several categories of “Consequential Harm” resulting from the abuse and hierarchizes the harm that the abuse on a claimant (Figure 2).

Figure 2 (source: “Guide to the Independent Assessment Process Application,” <http://www.iap-pei.ca/forms-fs-eng.php?act=iap-guide-v3.3-20180312-eng.php>)

Level of Harm	Consequential Harm	Compensation Points
H5	<p>Continued harm resulting in serious dysfunction. Evidenced by:</p> <ul style="list-style-type: none"> psychotic disorganization, loss of ego boundaries, personality disorders, pregnancy resulting from a defined sexual assault or the forced termination of such pregnancy or being required to place for adoption a child resulting from such a pregnancy, self-injury, suicidal tendencies, inability to form or maintain personal relationships, chronic post-traumatic state, sexual dysfunction, or eating disorders 	20-25
H4	<p>Harm resulting in some dysfunction. Evidenced by:</p> <ul style="list-style-type: none"> frequent difficulties with interpersonal relationships, development of obsessive-compulsive and panic states, severe anxiety, occasional suicidal tendencies, permanent significantly disabling physical injury, overwhelming guilt, self-blame, lack of trust in others, severe post-traumatic stress disorder, some sexual dysfunction, or eating disorders. 	16-19
H3	<p>Continued detrimental impact. Evidenced by:</p> <ul style="list-style-type: none"> difficulties with interpersonal relationships, occasional obsessive-compulsive and panic states, some post-traumatic stress disorder, occasional sexual dysfunction, addiction to drugs, alcohol or substances, a long term significantly disabling physical injury resulting from a defined sexual assault, or lasting and significant anxiety, guilt, self-blame, lack of trust in others, nightmares, bed-wetting, aggression, hyper-vigilance, anger, retaliatory rage and possibly self-inflicted injury. 	11-15
H2	<p>Some detrimental impact. Evidenced by:</p> <ul style="list-style-type: none"> occasional difficulty with personal relationships, some mild post-traumatic stress disorder, self-blame, lack of trust in others, and low self-esteem; and/or several occasions and several symptoms of: anxiety, guilt, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem. 	6-10
H1	<p>Modest Detrimental Impact. Evidenced by:</p> <ul style="list-style-type: none"> occasional short-term, one of: anxiety, nightmares, bed-wetting, aggression, panic states, hyper-vigilance, retaliatory rage, depression, humiliation, loss of self-esteem. 	1-5

The “Consequential Harm” chart assigns the highest number of points for what it recognizes as the most severe psychological and physical harm. Notably, survivors are compensated for being “dysfunctional,” which a term that is synonymous with abnormality,

impairment, and deviation from a healthy state, and carries a certain level of stigma and undesirability. The IAP evidently adopts a narrow definition of harm that is restrictive even for an individual reparations program, which are often able to account for the experiences of “each human being” and thus avoid minimizing the “particular harm done” (Margarrell 2007:5). Specifically, all harms outlined in the chart above are individualized through psychological and physiological lenses, which constitute a hyper-individualized model of harm that discounts the impact of abuse on the social and cultural aspect of survivors’ lives, with the possible exception of the “inability to form or maintain interpersonal relationships.”

6.2.1 Transvaluing Indian Residential School abuse and harm for money

I draw on John Borneman’s (2002; 2011) research on financial compensation for political violence to theorize transvaluation as a process that substitutes money for violence, in which Canadian law represents the vehicle that mediates the exchange. By transvaluing Indian Residential School abuse for money, the IAP engages in what Borneman (2002) refers to as “generalized exchange,” which takes place when direct restitution is impossible to achieve. Direct restitution, or “restricted exchange,” involves acts of identical replacement, such as the return of stolen property or land, reinstatement of citizenship, or restoration of employment, and is much easier to achieve than generalized exchange, in theory. I suggest that the IAP occupies a paradoxical space in relation to transvaluation: while no amount of compensation is commensurable with lost childhoods, restoring broken family ties, and reversing the effects of the abuse, leaving survivors uncompensated is also not an option because justice requires that “injuries can and must be compensated” (Minow 1998:104; Thompson 2002), or as one survivor

articulated in his interview, “I deserve a settlement like everybody else” (Joseph, survivor, 4 July 2016), which denotes a call for equality with settler Canadians.

By attempting to transvalue Indian Residential School abuse, yet at the same time being incapable of adequately compensating for the experiences of abuse, the IAP represents an attempt to “repair the irreparable” (Minow 1998). One way that IAP engages with the idea of repairing the irreparable is by viewing the abuse and harm through the lens of criminal liability and by assigning them a financial value based on their perceived severity. The result of this process is a simplification of the complexity of experiences and realities of the Indian Residential Schools through which the IAP depoliticizes and decontextualizes the violence and constructs survivors as “historically muted subaltern subjects” (Spivak 1988:305) because “money can speak a language without specific content or relation to the past” (Borneman 2002:287). In this regard, the IAP is an imperfect tool, or a compromise (Teitel 2000) that is ultimately selective in its representations of violence.

In an attempt to transvalue violence for money, the IAP disregards one of the core principles of financial compensation, which cautions reparations practitioners to avoid proportional valuation of harm because it may invite victims “to interpret [it] as an effort to put a price on the life of victims or on the experiences of horror” (de Greiff 2006:465-66)¹⁷. However, the compensation chart does exactly this: it awards financial payments based on the perceived hierarchy of severity of abuse that “serves as a proxy for a level of concern or a proxy for a level of acknowledgment about how badly you were hurt” (Eric, leader of an Indigenous advocacy organization, 22 June 2016). Accordingly, survivors may equate lower amounts of compensation with their value as member of society. In this generalized exchange, the legal vocabulary mediates what is being exchanged and for how much money, which also dictates whose

¹⁷ I return to the issue of interpretation of IAP awards in the final section of this chapter.

experiences are privileged and whose are discarded because lawyers are the ones who get to “decide how bad it was for you” (Joseph, survivor, 4 July 2016).

The proportional transvaluation of money for Indian Residential School abuse may seem offensive to survivors because its approach to equating, calculating, measuring, and itemizing violence fails to reflect the realities of the Indian Residential School experience and therefore represents what Martha Minow classifies as “statements of actual value [that can] trivialize the harms” (Minow 1998:93). As one survivor asked me, “it affects your marriage, it affects your children, it affects your grandchildren, it affects your whole family. So how can you compensate for that?” (Andrew, survivor and RHSP worker, 9 July 2016). Other survivors with whom I have spoken expressed their frustration with the ways their stories were first converted into a point system and then assigned a financial value (Susan, survivor, 29 June 2016; Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016). For other survivors, what was missing from their IAP hearings was active listening that they required to break the silence that was imposed on them for centuries of colonization: “I just need someone to basically hear me out” (Helen, survivor, 10 May 2016; also Michelle, RHSP worker, 13 May 2016; and Jason, survivor, 31 July 2016).

The compensation chart transvalues abuse exclusively in relation to the *most extraordinary* violent acts survivors suffered, or what one IAP lawyer referred to as the “one worst thing” they experienced (Sarah, IAP lawyer, 8 June 2016). Such an approach to compensation challenges the traditional individual reparations framework that is typically required to generate a precise account of the damages and to acknowledge the uniqueness of experiences of victimization (Margarrell 2007; Satz 2007; de Greiff 2006). By compensating survivors only for a single act of abuse, the hierarchy of victimization has the tendency to

subsume the “less serious” violence within the “more serious” violence. This means that if a student claims multiple acts of physical and sexual abuse, the IAP will rank order the violence and compensate the survivor only for the act that it considers to be the most severe. For example, if a survivor suffered sexual abuse classified at the levels of SL5 and SL3, he or she will only be compensated for the SL5 sexual abuse: “it’s not like if you got an SL3 and SL5. There’s no such thing as an SL8, so it’s the highest claim” that is compensated (Eric, IAP lawyer, 22 July 2016). Then what role does the “less serious” abuse play in the calculation of IAP awards when it is claimed alongside “more serious” abuse? The “less serious” instances of abuse serve a dual function in the compensation chart that is merely contextual to the “more serious” abuse. The “less serious” abuse appears relevant insofar as its effects exacerbate the overall harm caused by the “more serious” abuse. Further, the effect of the “less serious” abuse on the value of the claim is contextual: they are used by the adjudicator to increase the number of points *within* the category into which “more serious” acts of abuse¹⁸ fall.

6.2.2 Biomedical professionals as expert witnesses

The IAP solicits the expertise of psychiatrists that functions as an ordering mechanism and structures the hierarchy of victimization in the compensation chart, with the intention to objectively determine what constitutes abuse and harm. The Assembly of First Nations, which represented the interests of survivors at the negotiations of the IAP, requested that two adjudicators be appointed at the hearings: one with legal expertise, and another with a background in “psychological, social and economic effects of sexual and physical abuse” (Assembly of First Nations 2004:33). Yet, the negotiations resulted in the appointment of

¹⁸ For example, the “less serious” acts of abuse at the PL level may increase number of points to the upper limit in the SL5 category (45-60)

psychiatrists as the principal mental health professionals in the IAP, whose job consists primarily of diagnosis and treatment of mental health disorders, which partially explains the prioritization of an individualized approach to evaluating the severity of abuse and its consequences.

Medical professionals play an important role in the process of transvaluation. They engage in practices of interpretation and reinterpretation of abuse, which supersede survivors' own subjectivities, especially when it comes to measuring the extent of injuries. Biomedical discourses that the IAP draws on to ascertain the seriousness of injuries are quite powerful: on the one hand, they externalize certain injuries while downplaying or disregarding others, yet on the other hand, they penalize survivors whose injuries do not fall in the prescribed narratives of violence. When claiming physical harm, for example, the evidence must include extensive and visible injuries manifesting in broken bones, loss of consciousness, and incapacitation. One survivor recalls that his claim was denied because he "didn't get knocked out and didn't seek medical attention" (Brian, survivor, 29 July 2016), which in the context of the IAP meant that his injury was not serious enough, and because it was not verified by a medical expert, it was not considered compensable. The survivor's comments clearly demonstrate a hierarchy of victimization and the legal requirement to comply with medical experts to validate compensable injuries and harm. In other words, compensable harm must not only be significant, but measurable and empirically verifiable. Another survivor recalls his experience at an IAP hearing where he submitted a claim for physical abuse, which in his case was a cut to his hand that was later covered by a scar that the lawyer representing the Canadian government argued "wasn't big enough," and these kinds of arguments have been really problematic and powerful in discrediting survivors' claims (Andrew, survivor and RHSP worker, 9 July 2016). By rejecting survivors'

subjectivities and experiences of suffering, legal discourses of harm depoliticize the abuse through denial.

6.2.3 Transvaluation and settler colonial subjectivities

The process of transvaluation privileges the subjectivities of IAP lawyers and adjudicators in constructing narratives of compensable abuse and harm. These actors are empowered to engage in discursive representations of survivors' experiences and realities, and as we know from critical victimological research, "*power and choice* are in fact being exercised in the construction of victim voices" (McEvoy and McConnachie 2013:497, *emphasis in original*). Survivors, in turn, are expected to "perform" clinically defined dysfunction contained in Figure 2 at their hearings to conform to specific narratives of victimhood (Rock 2002), in which displays of resilience are detrimental to the value of the claim.

To accomplish the objectives of transvaluation, the lawyers and adjudicators mobilize the compensation chart as a discursive tool that fulfils performative, interpretive, and organizing functions by generating particular representations of abuse and harm to determine who is "hurt enough for a claim" (Linda, RHSP worker, 13 June 2016). The compensation chart quantifies and objectifies survivors' experiences and assigns them a numerical value on a point scale, which at the same time overrides survivors' subjectivities and interpretations of the violence they suffered. While the erasure of survivors' subjective experiences takes place at multiple stages of the IAP, the compensation chart facilitates erasure by discounting the importance of various factors in the lives of survivors, such as resilience, family support, and friendships, that mediate the impact that the abuse had on them (Anna, RHSP worker, 5 August 2016). Specifically, the process of transvaluation disregards *the impact* of harm on survivors, which relates to how

individuals experience it, and its understanding requires a particular type of intersubjectivity. It is a qualitatively different measure than the objectified “Consequential Harms” displayed in Figure 2 because its subjective tendencies make it “difficult to assimilate into the structures of meaning” (Borneman 2011:11).

In my conversations with survivors I learned that they had often experienced intergenerational trauma that extended beyond the prescribed IAP harms, yet in their claims it played no role in determining its financial value because it defies measurement. In this respect, the compensation chart falls short as a comprehensive tool of assessment of harm and trauma: “how can you measure this amount of abuse when you don’t know how deep the trauma and the harm is?” (Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016). Individualizing discourses of violence that focus on the decontextualized psychological and physical harm trivialize what one survivor referred to as the “total trauma” of the Indian Residential Schools, which continues to inflict serious consequences on Indigenous families and communities (Derek, survivor, 17 May 2016). By focusing on discreet acts of sexual and physical violence, the compensation chart privileges short-term wrongful acts (maximum 60 points), even if they are “repeated and persistent,” over harms (maximum of 25 points). This is a serious problem because such a system “assigns too many points to the injuries and not enough points to the consequences of the injuries” (Assembly of First Nations 2004:15). It fails to recognize the ongoing effects of violence that produce life-long impacts on the lives of survivors and account for the consequences of the abuse on survivors’ families and communities.

The process of transvaluation inflicts symbolic violence when it undermines survivors’ “legal and moral subjectivity” (Kutz 2004:284) and privileges the adjudicators’ interpretations of their experiences that “deny the identity of the colonized” (Collins 2011:32). The IAP invokes

Indigenous subjectivities in the form of testimony of non-compensable violence only for the purpose of objectifying the compensable acts in the compensation chart and then erases them, or at the very least, leaves no space for their subsequent expression (Veracini 2011). The compensation chart erases survivor subjectivities because its approach to transvaluation of abuse imposes a particular frame of reference about what counts as very serious, serious, less serious, and the least serious forms of abuse and harm. The IAP lawyers, with their profit-driven selection of cases, operate in a similar manner by constructing hierarchies of victimization (Carrabine et al. 2004) by mobilizing the compensation chart. The most sought after group of claimants are survivors whose experiences of *severe sexual abuse* with lasting effects and severe dysfunction, if successful, typically deliver the highest profits for the lawyers. The hierarchy of sexual and physical abuse renders nonjusticiable other types of violence that survivor may have suffered and considered worthy of compensation. The experiences of these survivors remain unaccounted for because they cannot be codified and quantified through a point system and do not comply with legally accepted narratives of abuse and harm:

In addition to the sexual abuse that they endured, the [survivor] also wanted to talk about the humiliation of being made to stand in the corner for hours until his legs couldn't hold him, and he would fall down. And that he would pee his pants. And had to stand there with urine running down his legs. And then collapse in utter fatigue. Those kinds of things, the humiliation pieces. The lawyer would focus on the abuse, the abuse, the abuse (Linda, RHSP worker, 13 June 2016).

To this end, the IAP erases Indigenous subjectivities by excluding survivors' own interpretations of abuse they experienced: "we had to fit into the grid system. The grid system didn't fit into us. And yet it was *our* settlement" (Matthew, survivor and RHSP worker, 10 May 2016). In fact, one of the lawyers admitted that she supplied her claimants with the compensation chart so that they could study it and be mindful that it will be "the standard against which their story is going to be evaluated" (Jennifer, lawyer, 28 June 2016).

Once survivors' claims are screened in for adjudication, they are transvalued into the categories of the compensation chart, where the adjudicator uses subjective judgement and discretion to determine the compensation amounts by evaluating survivors' experiences of abuse: "it's subjective to a certain degree, there's a lot of subjective judgement in there, a lot of leeway for judges to do what they want" as long as they stay within the parameters of Schedule D of the Indian Residential School Settlement Agreement (Sean, IAP adjudicator, 18 May 2016). The irony is that although the IAP compensation chart was designed to be an objective measure with an eye for legal truth, the adjudicator has the authority to adjust the number of points within a given category based on the "overall context of the abuse" (Mark, IAP lawyer, 6 July 2016). The adjudicator's interpretation mediates transvaluation and transforms the compensation chart from an instrument of standardized measure into a subjective tool that gives the adjudicator the authority to increase or decrease the number of additional points within a pre-determined range of points (Figures 1 and 2). Adjudicator subjectivity that regulates the number of points within a given category is based on a particular standpoint and subject position that is privileged and empowered to construct knowledge about Indigenous experiences and what counts as aggravating factors (Figure 3) that require adjudicators to conduct an "assessment [and] to look at that individual *as an individual*" (Ryan, IAP adjudicator, 7 August 2016, emphasis in original).

Figure 3 (source: “Guide to the Independent Assessment Process Application,” <http://www.iap-pei.ca/forms-fs-eng.php?act=iap-guide-v3.3-20180312-eng.php>)

Indian Residential Schools Independent Assessment Process GUIDE v3.2 April 4, 2013	
Aggravating factors Add 5 to 15% of points for Act and Harm combined (rounded up to nearest whole number)	
<ul style="list-style-type: none"> • Verbal abuse • Racist acts • Threats • Intimidation or inability to complain; oppression • Humiliation; degradation • Sexual abuse accompanied by violence • Age of the victim or abuse of a particularly vulnerable child • Failure to provide care or emotional support following abuse requiring such care • Witnessing another student being abused • Use of religious doctrine, paraphernalia or authority during or to facilitate the abuse. • Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal) 	

What is problematic about the adjudicators’ interpretation of survivors’ experience is that they mobilize a lens that is socially advantaged and inevitably restrictive because it adopts the adjudicators’ worldviews and value systems, which are predominantly white and male, to “fit [survivors] into those different categories and different columns” of the compensation chart (Matthew, survivor, 15 May 2016). As a result, the adjudicators have the discretion to exercise their subjectivity in any way they please, as benevolently or maliciously, based on their judgement of how well survivors are able to “perform” dysfunction before them. The relations between the adjudicators and survivors reflect the power dynamics of settler colonial rule over Indigenous people more generally.

This is not to say that all of the lawyers and adjudicators I interviewed uncritically accepted the use of the compensation chart as a tool to assess the financial value of violence and harm. According to one adjudicator, the chart represented the outcome of “the white man’s justice that’s arguably culturally inappropriate” (Sean, IAP adjudicator, 18 May 2016). Another lawyer, who represented the Government of Canada at the hearings, shared with me that she

encountered a tension when she was required to “take something so personal [as survivor testimony] and [then] categorize it and genericize it,” with the goal to achieve some sort of fairness and consistency across the diverse range of survivors’ experiences (Jodie, lawyer, 20 June 2016). For other lawyers, the process of explaining the compensation chart to survivors presented ethical challenges because it made it difficult for them to articulate to survivors that “what happened to [them] was worth 35 points” (George, lawyer, 15 July 2016).

6.3 Establishing sexual and physical abuse as compensable violence

Before considering how physical and sexual abuse gained traction in the IAP compensation chart, it is worth examining a brief history of litigation that led to the IAP. The failure of the IAP’s predecessor, the Alternative Dispute Resolution Program (ADRP), to resolve claims of physical and sexual abuse coincided with a number of class action lawsuits launched between 1998 and 2004. *Cloud* class action, for example, sought \$2.3 billion dollars in damages for various types of Indian Residential School violence. The lawsuit, led by Marlene Cloud, alleged that a group of former students at the Mohawk Institute in Brantford, Ontario suffered abuse at the hands of school staff from 1922 to 1969 (Truth and Reconciliation Commission of Canada 2015a). The statement of claim read that in addition to physical and sexual abuse, claimants also sought damages for “breach of fiduciary duty, negligence, breach of aboriginal rights” (*Cloud v. Canada*). They also alleged that the Indian Residential School system created “an atmosphere of fear, intimidation and brutality, and that it had the aim of promoting the assimilation of native children.” During roughly the same time period, between 1998 and 2005, nineteen other class action lawsuits, including *Baxter* and *Dieter*, were filed and threatened to bankrupt the government and churches, seeking damages for “loss of language and culture, based on

negligence and breach of fiduciary, statutory, and common law duties, as well as Treaty obligations” (Truth and Reconciliation Commission of Canada 2015a:569). The urgency of the impending legal action compelled the government to begin negotiations of what is now known as the *Indian Residential Schools Settlement Agreement*.

Considering that the lawsuits sought such a diverse range of damages, how did the IAP end up being mostly about sexual abuse? Indeed, the IAP resembles the ADRP, which also compensated former students primarily for sexual abuse. Unfortunately, none of my interview respondents were able to provide me with a reason why sexual abuse occupied the highest compensable category in the IAP compensation chart. However, the Criminal Code of Canada, on which the IAP compensation chart is based, provides an explanation regarding the differential valuation of sexual and physical abuse. While aggravated sexual assault against persons under sixteen years of age carries a maximum sentence of life imprisonment (Section 273 (2) a2 of the Criminal Code), punishment for aggravated physical assault carry the maximum sentence of fourteen years. The Criminal Code provisions related to child sexual abuse are constructed in relation to discourses of idealized childhood characterized by purity, innocence, vulnerability, weakness, and potential for exploitation (Smart 2000), all of which contributed to their position as “ideal” victims on whom powerful offenders prayed (Smart 1999). This logic has been fully translated into the IAP compensation chart.

Notably, the Assembly of First Nations (ANF) raised questions around this approach to valuation of child sexual abuse in their report criticizing the ADRP, in which sexual abuse was weighted heavily in proportion to physical abuse. Their criticism is worth quoting at length:

There is no reason why sexual abuse, as a category, should carry a maximum of 60 points, while the most extreme form of physical abuse has a maximum of 25 points. Adjudicators should have more flexibility to address severe physical and sexual abuses through awarding more points for one or the other, or cumulatively together, as

circumstances require. For example, a student may have suffered a physical beating in residential school that resulted in a miscarriage; or a rape, which resulted in a pregnancy; or a pregnancy that resulted in a forced abortion. These entire circumstances raise questions about the adequacy of the maximum level of points as well the rigid distinction between physical and sexual abuses. We would be pleased to work with Canada to refine the assessment measures for severity of abuses and severity of injurious consequences (Assembly of First Nations 2004:21).

Yet, at the negotiations of the *Settlement Agreement*, the AFN received exactly what they criticized in the ADRP. From my interview with the AFN Chief Negotiator I learned that this was a necessary compromise that needed to be made in order to keep the negotiations moving forward regardless of how arbitrary the valuation may have seemed at the time (Jennifer, lawyer, 28 June 2016). This compromise points to the larger issue of power relations at the negotiations that put Indigenous stakeholders at a disadvantage: “it’s a settlement agreement between adverse parties, Aboriginals on one side, the churches and the federal government on the other side. And they settled an agreement, so... *what power did they have?*” (Sarah, lawyer, 8 June 2016, emphasis added).

I discovered from a source involved in the negotiations of the IAP that sexual and physical abuse were chosen as compensable categories because they represented primary areas of liability for the government and churches, and leaving these types of abuse unaddressed could have left these parties vulnerable to legal action (Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016). The IAP, and the *Settlement Agreement* more generally, filtered the claims of the class action lawsuits through the legal framework to arrive at a model that compensated claimants primarily for physical and sexual abuse because “it would have been impractical as would have meant holding 80,000 hearings” to address all other types of claims under Canadian law (Frank, lawyer, 24 August 2016). The Common Experience Payments (CEP) would cover the remainder of the Indian Residential School experience that the

IAP was unable to account for (Richard and Jodie, lawyers, 20 June 2016 and 4 July 2016). Yet, it is hard to believe that the CEP, which is designed to “recognize the experience of living at an Indian Residential School(s) and its impacts” (Indian Residential Schools Adjudication Secretariat 2013a), covers the violence alleged in the class action lawsuits. If anything, it sanitizes it and robs it of meaning by subsuming it under the totality of the Indian Residential School experience.

Sexual and physical abuse was selected as compensable violence in the IAP through the process of non-decision making that constitutes “the practice of limiting the scope of actual decision-making to ‘safe’ issues” (Bachrach and Baratz 1963:632). Non-decision making is facilitated through the dominant political, social, and cultural values that are embedded in the power among groups that “effectively prevent certain grievances from developing into full-fledged issues which call for decisions” (Bachrach and Baratz 1963:641). The so-called “safe” issues in the IAP comprised pre-determined compensable violence under Canadian law, while more complex issues that challenged the normative legal framework and highlighted structural violence were “off the table” during the negotiations. In other words, the interests of the government guided the non-decision making in the IAP and operated covertly by precluding the very possibility of decision making. The dominance of Canadian legal norms in the compensation chart was established through a “mobilisation of bias” that was made up of “a set of predominant values, beliefs, rituals and institutional procedures...that operate systematically and consistently to the benefit of certain persons and groups at the expense of others” (Bachrach and Baratz 1970:44). This bias entered the IAP negotiations partly through a pre-established agenda that served a dual function. First, it placed limits around the political space where Indian Residential School violence was discussed. Second, it effectively ensured that the disempowered

actors – survivors and their representatives – would not raise undesirable issues at the IAP negotiations by recognizing the limits of compensable violence and “acknowledging the non-decision making powers of the system” (McCalla-Chen 2000:34).

The categories of physical and sexual abuse in the compensation chart regulate and legitimate suffering, and filter the experiences of survivors through a process of “selection and representation of specific acts of injustice” in order to create a particular set of narratives about the past (Johnstone and Quirk 2012:165). As a result, the compensation chart presents sexual and physical abuse as the hallmarks of the Indian Residential School experience, much like the Indian Residential Schools themselves are often crafted into the synecdoche of the settler colonial project. Viewed through this lens, the sexual and physical abuse attains a calculable and manageable character that “can give the colonial enterprise in Canada something more like the form of a case” (Henderson 2013:66), which obscures the nature and extent of non-compensable Indian Residential School violence including forced assimilation, loneliness and separation, loss of languages and cultures, traditional ways of life, parenting skills, and many other harms.

Acute and visible violence was selected as the synecdoche of Indian Residential School abuse because, as I briefly note earlier in this chapter, other types of violence evaded financial appraisal and transvaluation. They are not easily justiciable and can be best understood through the lens of the restrictive principle of reparations, which is invoked when the harm “seems potentially limitless” (Teitel 2000:134). According to this principle, compensable violations require clear boundaries within which claims must fall. In one interview, a survivor suffering from depression confirmed the existence of the restrictive principle in the IAP: even though depression is a compensable *harm* (H2, Figure 2), her IAP claim had been denied because it was not caused by a compensable *act* within the compensation chart (Susan, survivor, 29 June 2016),

but rather by the totality of her experience at the school. Understood in this way, the hierarchy of compensable harms “limits [survivors] to a scale that had nothing to do with the reality of suffering of thousands and thousands of survivors” (Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016).

Compensable violence and corresponding harms found in the compensation chart are defined in relation to Canadian legal doctrine that has not made sufficient advances to include structural, which is not easily quantifiable:

There’s no place within the system to compensate for loss of culture or language. Because where is it gonna occur in Canada? Nobody lost their language, nobody lost their culture in Canada, but the First Nations people. Where would the precedent come from? (Matthew, survivor and RHSP worker, 11 May 2016).

Indeed, throughout its history of civil litigation, the Canadian government has not developed a reparations system for determining a “comparable area of awards of compensation from which to determine damages” (Cunneen 2005:67) some assimilationist institutions like Indian Residential Schools. Even though the parallel compensation process under the Settlement Agreement – Common Experience Payment (CEP) – is often thought to represent the compensation for the overall negative experience of Indian Residential Schooling, as well as the loss of cultures and languages, the financial value of these losses is much lower than it is for the physical and sexual abuse compensated under the IAP¹⁹ (Aboriginal Healing Foundation 2013). Further, the CEP’s mandate does not explicitly acknowledge that it covers the loss of cultures and languages. In fact, if its mandate is examined closely, it appears that it is very broad and “recognizes the experience of living at an Indian Residential School(s) and its impacts” (Indigenous and Northern Affairs Canada 2013), which contains language that hides the political motivation for establishing the Indian Residential School system. Prior to the negotiations of the *Settlement*

¹⁹ The now-defunct CEP followed a “10+3” formula for compensation: eligible students receive \$10,000 for the first year at an Indian Residential School and another \$3,000 per year for their remaining years at the school.

Agreement, the National Residential School Survivors' Society (NRSSS), which was an organization representing 32,000 former students, lobbied for a more generous Common Experience Payment program than what was negotiated. In my interview with its former president, I discovered that NRSSS proposed that the CEP be based on a graduated scale that took into account the overall hardships associated with the time period when a student had attended an Indian Residential School: "we were trying to weigh the hardships. The person who went to school in the 1920s and 1930s would get a base amount of \$125,000, in the 1940s and 1950s he'd get \$100,000. Because the conditions changed, the food got better... so we said we'd give a gradient" (Matthew, survivor, 11 May 2016). In response, the government rejected the proposal and de-funded NRSSS several years later: "we put that in the proposal and that's when they broke everything up and went back to that 10+3, which Canada had already had up their sleeves" (ibid.).

The Canadian government, who held "the purse strings" and therefore all the power during the negotiations of the *Settlement Agreement*, played a key role in establishing the hierarchy of victimization in the IAP compensation chart by endorsing some types of abuse and not others (Jane, IAP lawyer, 11 February 2011). Specifically, the government's initial position was to compensate only for acts of sexual abuse, and later in the negotiation it agreed also to compensate for acts of physical abuse as well, but only if they were "serious" (Sarah, IAP lawyer, 8 June 2016). One possible explanation for such a construction of violence is that tort law, which serves as the legal basis of the IAP compensation chart, is inspired by nineteenth-century railway accidents. The underlying assumption of an unintentional tort is that it produces unintended consequences: accidental violence is "something that happens by chance or is uncaused... something sudden, bad, harmful, and destructive" (Hacking 1995:185).

This analogy is productive for thinking about the IAP, and several lawyers have noted the tendency of the compensation chart to frame acts of abuse in accidental terms. As one lawyer shared with me, to him the IAP represented “a system that [is] probably [not] different from an automobile accident” (Richard, IAP lawyer, 4 July 2016). The logic that analogizes Indian Residential School abuse with an accident is problematic because “an accident happens in a blink of an eye” (Anna, RHSP worker, 5 August 2016), whereas the abuse at the schools went on for more than a century. The accident analogy also exonerates the settler colonial enterprise that enabled the conditions for the abuse. Granted, when establishing the Indian Residential School system, the Canadian government neither foresaw nor intended the widespread abuse associated with the Indian Residential Schools. After all, the schools were designed with the primary objective to assimilate Indian students into settler colonial society, and the resulting abuse was an unanticipated consequence of these practices. Nevertheless, the Indian Residential Schools represented a modality of cultural and structural violence, which was *not* accidental.

6.4 Performative labour of the IAP compensation chart

The compensation chart presents survivors with a vocabulary of tools that enable them to interpret their experiences in accordance with official discourses of victimization and victimhood. It consists of pre-determined options that encourage a particular framing of their experiences in relation to the categories of abuse and harm supplied in the chart. In other words, the chart simplifies the complexity of suffering by offering survivors “very simple pre-existing templates to [address] complex and often ambiguous situations” (Graeber 2015:75). I evaluate the potential of the compensation chart to “steal the pain” of survivors (Razack 2007), to rob them of voice (Wilson 2001a), and to channel and limit their interpretations of the violence they

suffered through a settler colonial instrument that caters to particular political and social narratives. The compensation chart is capable of what Spivak (1988) refers to as speaking for and on behalf of survivors, which determines the parameters around the sayable and nameable violence (Ranciere 2010). In doing so, the chart “discount[s] particular kinds of experience” and restricts the “social space” (Ross 2003:163) provided to survivors to express themselves.

6.4.1 The IAP compensation chart as a classification system

One of the ways that the compensation chart engages in performative labour vis-à-vis survivors’ experiences is by presenting them with a selection of the available categories of abuse and associated harm (Figures 1 and 2). In doing so, the chart speaks for and on behalf of survivors about their experiences, some of whom use it as an instrument for expressing their suffering. In an interview with an RHSP worker, I learned that survivors sometimes built linkages between their experiences and the corresponding levels of abuse in the chart. When asked about the abuse a survivor suffered, he responded: “This is where I would fit in the compensation chart” (survivor quoted in an interview with Donald, RHSP worker, 13 May 2016). The compensation chart makes abuse intelligible and comprehensible, and “events in a life can now be seen as events of a new kind, a kind that may not have been conceptualized when the event was experienced” (Hacking 1999:130). In fact, some survivors did not recognize the abusive acts they suffered as such until they saw the compensation chart, which served as a tool for making sense of their experiences. One survivor reported to have used a legal dictionary to name the abuse or to answer questions directed at him by the lawyers and adjudicators (Paul, survivor, 12 May 2016).

The IAP lawyers and adjudicators are the primary stakeholders in the process of reinterpretation and reframing of survivors' experiences through the use of the compensation chart that functions as an instrument "through which new societal visions and subjectivities are constructed and performed" (Woolford 2010:138). The process of reinterpretation and reframing takes place after survivors receive their IAP awards:

[My lawyer] showed me the points, the point system, and she said, "You have this point...you have this many points for this, that many points for that, she went through the point system." She explained that these are the points...then she had a total of the points, and she said, "This is how many points you have. This is how much money [you get]" (Jason, survivor, 1 August 2016).

The compensation chart filters survivor testimony and identifies their experiences with parcels of compensable violence that are made to fit into the chart, which individualizes it and divorces it from the broader spectrum of violence they may have suffered. IAP lawyers manage, mediate, and regulate the flow of information between the compensation chart and survivors' interpretations of their settlements: "what I tried to do...was to find a balance between too much and too little information. Giving them enough that they understand, without being overwhelmed, and that's an art, not a science" (Mark, IAP lawyer, 6 July 2016). The compensation chart necessitates a legal interpretation and subsequent translation of the meaning of the IAP awards to survivors because it represents a tool that is foreign to them, but also it places the power in the hands of the lawyers to determine what counts as valuable and relevant information and how much information is enough for survivors to understand the outcomes of their hearings.

The compensation chart represents a modality of bureaucratic violence that is firmly located within what David Graeber refers to as "the age of total bureaucratization" (Graeber 2015:18). Specifically, the compensation chart is a modality of the bureaucratic machine that

reduces “rich social reality and confine[s] [its] attention to a tiny, arbitrarily selected subset of the relevant facts” (Weinberg 2017:1100). The chart represents a classification system (Bowker and Star 2000) that silences the voices of survivors in several ways. First, it does so by reducing and confining their experiences to a series of check boxes and comment sections on the application form that channel “incidences of the testimony of the claimants into that grid system that they developed for compensation” (Matthew, survivor and RHSP worker, 15 May 2016). Second, the physical layout of the IAP Application Guide contains what one lawyer considered an insufficient amount of space for survivors to describe the violence and harms they suffered, which discourages them from telling a complete story:

They might think, “Oh there’s only this much space, so I’m going to put only this much information. Or there’s not enough space to put the information so now I’m not even going to write it down at all.” So the form itself might affect the quality and quantity of information that someone chooses to provide (George, IAP lawyer, 15 July 2016).

Third, the IAP Application Guide forces survivors to express their experiences by submitting them in writing rather than communicating them orally, as some of them would prefer: “it’s hard enough even to put it on paper than having to go and sit with a lawyer or a bunch of lawyers or whatever the case may be” (Susan, survivor, 29 June 2016). Such an approach to gathering testimony has presented difficulties for many survivors, who “would have more confidence and [whose] story would have been much more fine, or whatever, step by step” if presented orally (Brian, survivor, 29 July 2016). The process of translation of oral testimony into its written form inflicts cultural violence because it presumes that survivors will adopt Western legal methodologies of sharing their testimony, which contributes to assimilation and disregards the relevance of Indigenous oral tradition and storytelling practices, while at the same time establishing Western epistemology as the norm (Piquemal 2003).

6.4.2 Regulating the interpretation of abuse through IAP compensation payments

At this point it is worth returning to the discussion of the symbolic and substantive dimensions of financial compensation and exploring how they relate to the interpretation of suffering. I examine how the various levels of the IAP awards guide survivors' interpretations of their experiences of abuse. As I theorized earlier in this chapter, financial compensation may be interpreted in relation to what it represents, rather than the particular types of abuse it is designed to compensate. Here I argue that based on my research interviews, a successful reparations program is required to account for the damages substantively (provide fair and adequate compensation) *and* be symbolic (carry particular significance for survivor).

Before considering the symbolic and substantive dimensions of the IAP, it is worth briefly examining these dimensions of reparations in the international context. In the South African Truth and Reconciliation Commission (SATRC), which was also established in a settler colonial context to investigate crimes committed during apartheid (Nagy 2012), material reparations are often thought to carry a symbolic meaning. The SATRC's Committee on Reparations and Rehabilitation (CRR) recommended lump-sum individual grants to families of victims in the amounts that ranged between US\$2129 and US\$2878, depending on the geographic location (urban/rural) and the size of victims' families. As controversial as these payments may have been due to a variety of factors, including their low financial value and narrow definition of the concept of victims (Hamber 2000), by some accounts, they represented an acknowledgement of the violence of apartheid and marked the beginning of a new political order (Hamber and Wilson 2002). Notably, the CRR did not make attempts to equate the amounts of individual grants to the degree of violence and harm suffered by victims' families.

Rather, the individual grants were distributed in a manner that recognized the wrongfulness of apartheid policies on the victims, in accordance with their socioeconomic circumstances.

The substantive dimension of the IAP is problematic. In contrast to the South African reparations program, the IAP compensation chart's method of proportional transvaluation of harm for money have led some survivors to interpret the degree of their suffering directly in relation to the amounts of their IAP awards. The smaller amounts have sometimes been considered offensive for the losses survivors endured at the Indian Residential Schools: "That pitily little thing here, for something I had to suffer for 13 years!" A number of other survivors reported similar attitudes toward what they saw as relatively small awards (Jeffrey, Matthew, and Susan, survivors, 1 August 2016; 11 May 2016; and 29 June 2016). Some RHSP workers mobilized the compensation chart to frame survivors' interpretations of their awards, which they used as an instrument for survivors to create their own narratives about how badly they were hurt: "my story wasn't as bad as some of them...I didn't get penetrated by anyone, eh?" (Sandra, survivor, 11 May 2016). In this respect, the smaller awards deliver survivors a sense of relief because they "actually help them to understand what they're compensated for" (Andrew, survivor and RHSP worker, 9 July 2016). In an interview with an RHSP worker, I learned that she once worked with a survivor who had received a relatively small IAP award and was at first disappointed at the amount of her compensation, but later she was relieved because to her it meant that the abuse she suffered was not severe as some other survivors experienced:

I said, "You know, the amount of claim is directly related to the amount of harm that was done, and you received that smaller amount, aren't you lucky?" And she said, "I've never thought about it that way." She said, "You're right," she said, "I wasn't sexually abused, you know, this and that," and she said, "Ok, I get it, I'm sorry." She just hasn't made that connection (Linda, RHSP worker, 13 June 2016).

Of course, in reality the smaller amounts do not necessarily correspond to lower levels of abuse and harm, but rather reflect the outcome of a legal process that commodified the discrete types of abuse they suffered. In this process, various factors, including the credibility and reliability of survivor testimony, as well as submissions of expert witnesses, influence the adjudicators' decisions and therefore do not always accurately reflect the content of survivor' original claims. However, as we can see from the above discussion, some survivors have internalized legal discourses that enable the interpretations of their experiences strictly in relation to the financial value of their awards.

The compensation chart regulates the interpretations of IAP awards in a more basic way – through the *act of issuing or denying compensation* – which carries a diverse spectrum of meaning for survivors, because it often plays a symbolic role in affirming or denying their experiences of pain and suffering (Verdeja 2006). As I discussed earlier in this chapter, the symbolic dimension of financial compensation can potentially sidestep the problem of incommensurability of financial compensation and victims' experiences. For some survivors, the amount of their IAP awards often does not matter: “even if it’s \$1, it’s an admission, if it’s \$100,000 it’s an admission. There’s no difference between \$100,000 and \$1 to receive as compensation because it’s an admission of a crime” (James, survivor and leader of an Indigenous advocacy organization, 7 June 2016; also Matthew, survivor and RHSP worker, 11 May 2016). In contrast, when their claims were rejected, survivors felt that rejection was equivalent to not being believed: “[it was the adjudicator’s] word against mine, and his was more powerful than mine” (Brian, survivor, 29 July 2016; also Susan, survivor, 29 June 2016). The adjudicator’s subjectivity denies survivor suffering and their claim to victim status. In this regard, the adjudicator embodies settler colonial privilege that operates with unquestionable authority and

has the power to overrule the perspectives of the colonized and to perpetuate settler colonial denial (Mamdani 1998b; Cohen 2001). The consequences of rejection are often quite profound for survivors because it often causes revictimization and opens old wounds for those who have finally found the courage to tell their stories: “she lost validation, she left like she was a liar, she felt like nobody believed her, and that she was a lesser person, a lesser citizen within the context of both the IAP and Canada generally” (Mark, IAP lawyer, 6 July 2016; also Michael, survivor, 17 June 2016).

6.5 Conclusion

In this chapter I explored how the IAP compensation chart constitutes a discursive tool for constructing representations of survivors’ experiences of abuse. It constitutes an outcome of survivors’ legal struggles for justice against the government and churches, and the scales of justice were tipped unevenly in their favour. The method of proportional transvaluation that the compensation chart employs presents significant problems for survivors. It assigns a financial value to the experiences of survivors, it is inherently selective, it defines their experiences narrowly in relation to the rigid parameters of the categories of abuse and harm, and it invites them to interpret the violence they suffered in financial terms. The compensation chart individualizes Indian Residential School violence and its consequences by locating the dysfunction in the body and mind of survivors, which they are expected to “perform” at the hearings, rather than considering the impact of abuse and its consequences on the social and cultural aspects of their lives.

The compensation chart represents an unjust and symbolically violent tool that privileges the subjectivities of the adjudicators and discounts the importance of survivors’ interpretations of

their own experiences. It trivializes and decontextualizes violence and places all of the decision making power in the hands of the adjudicator to determine whether survivors were “hurt enough” and how much their suffering is worth. By compensates survivors exclusively for acute, visible, and discreet violence and its immediate consequences that Canadian law determines as compensable, it constructs the severity of damage in clinical and biomedical terms, which objectifies survivors’ experiences. The compensation chart inflicts bureaucratic violence when it encourages survivors to internalize Western understanding of abuse and its consequences, and to reframe their experiences in relation to the compensable categories of abuse, which are filtered and simplified through legal discourses of victimization and victimhood, and subjected to the adjudicators’ legal interpretation.

Chapter 7: Anti-colonialism, contestation, and resistance

7.1 Introduction

Up to this point in my dissertation, I have evaluated the IAP's constitutive functions and how various actors in the IAP perform social labour to produce discursive representations of survivors' experiences. In effect, such an analysis of the IAP has focused disproportionately on the constitutive functions of the actors and stakeholders who are empowered to define the parameters of victimization and victimhood, and thus invisibilized survivors' agency. In this chapter, I re-centre agency by exploring several themes in relation to resistance, counter-narratives, and transgressive politics that survivors engage to contest the hegemony of the IAP.

I theorize strategies of resistance to the IAP as those that locate the continuities of Indian Residential School violence in the present and re-politicizes its objectives, which include elimination through assimilation (Wolfe 2006), ongoing dispossession, and continued domination, and challenges the naturalization of the rule of Canadian law over survivors. In my analysis, I observe that resistance takes place at moments when it compels the IAP to take into accounts survivors' lived experiences and realities, as well as the unjust structural conditions (Coulthard 2007). Transgressive politics seek to transform financial compensation to expose structural violence, to challenge settler colonial self-supersession, and to contest settler colonial denial (Veracini 2011; Cohen 2001; Collins 2011). Resistance would expand the scope of individual financial compensation and move beyond the individual acts of violence and uncover the "link between conquest and dispossession, between racialized power and racialized privilege" (Mamdani 2001:59). In my analysis I focus primarily on the practices and strategies

that survivors engage in order to constitute themselves as active agents who assert the presence of their Indigeneity (Veracini 2015).

In the IAP, survivors mobilize various resistance strategies to appropriate certain elements of the compensation process, namely the hearings and the financial awards they receive, to expose the continuities of Indian Residential School violence. I analyze these strategies through Courtney Jung's (2011) insights that Indigenous people may expand the limited scope of state-sponsored mechanisms of redress beyond their mandate. To this end, survivors may harness individual financial compensation to extend its reach and bring attention to structural violence, including social and economic rights, which they were not originally designed to address. I mobilize Jung's argument in conjunction with John Torpey's concept of "anti-systemic reparations," which function in a redistributive manner, seek to initiate social change, and trigger a shift toward egalitarianism. In my analysis, I explore how survivors strategically distribute their financial compensation awards to de-individualize, to politicize the IAP and, to compel the recognition of "collective and intergenerational harms [and] what counts as an injustice" (Jung 2011:227). Survivors also mobilize the IAP hearings to frame the Indian Residential School system as a single manifestation of settler colonial policy among many others. This perspective highlights the continuity of structural violence and expands the temporality of individual financial compensation.

7.2 Survivors' appropriation of the IAP hearings as spaces of resistance

Survivors perform resistance by re-orienting themselves as political subjects, reconstituting their indigeneity, and engaging in practices of self-affirmation and self-recognition on their own terms (Coulthard 2007). In these strategies, truth-telling plays a central role because it positions the

Indian Residential School system on the spectrum of structural violence. In my analysis I mobilize the concepts of theatrical dramatization (Rancière 1999; Davis 2010) and strategic desubjectification (Coulthard 2007; Coulthard 2014) that serve as theoretical lenses through which one could interpret survivors' resistance strategies. Theatrical dramatization refers to performative action aimed at constituting the speaker as a political subject demanding recognition. Strategic desubjectification, in turn, involves self-recognition and struggle against domination and oppression with the objective among the colonized to unmake themselves as colonial subjects, to foreground their subjectivities, and to reclaim and re-establish their indigeneity²⁰.

Theatrical dramatization and strategic desubjectification take place when survivors share their truths about their Indian Residential School experiences as political testimony. These truths can be empowering and liberating practices because they build counter-narratives of the marginalized (Lederach 2005) and expose the violence and corresponding harm that financial compensation has failed to address, thus exposing it as a "police order" (Rancière 1999). One such instance occurred at a time much earlier than the *Settlement Agreement*, when an Indian Residential School survivor Joseph Bonaparte launched a lawsuit against the Government of Canada for breach of fiduciary duty and damages including "loss of...parents' guidance, care and companionship" (*Bonaparte v. Canada*). When I spoke with the lawyer who represented him at a court hearing in 2003, he recounted Mr. Bonaparte's words in a conversation with him, which are worth reproducing at length:

Lawyer: "Joe, what is it...what are you after? What do you want to have happened?"

Joseph Bonaparte: "I want to get into a court room and I want to get up in the witness box and I want to tell the Queen that she violated her treaty obligations with the Indian Nation."

Lawyer: "The Queen's not going to be there."

²⁰ I discuss these concepts in greater detail in the Theoretical Framework chapter.

Joseph Bonaparte: “Yes she is. The Queen’s judge is going to be there. And I want to tell my story to the Queen’s judge and he’ll then tell the Queen” (Ryan, IAP lawyer, 7 August 2016).

Mr. Bonaparte’s words depict a set of circumstances in which a shift in the power relations between the colonizer and colonized takes place. As a result of this shift, the colonizer is compelled to recognize the colonized on their own terms as political subjects, and the colonizer is now obligated to bear witness to their demands. Mr. Bonaparte constitutes an empowered speaker who, by means of producing a spectacle, publicizes his legal battle in front of the media and the audience, and politicizes his struggle against the Government of Canada. An Indigenous principle of witnessing represents a powerful experience, both culturally and legally, which is related to the process of remembering truth, affirming survivors’ experiences, and understanding the collective impact of Indian Residential School violence (Truth and Reconciliation Commission of Canada 2015b).

The adjudicators at the IAP hearings represent witnesses who act as “the keepers of history when an event of historic significance occurs” and validate and provide legitimacy to a particular event (Truth and Reconciliation Commission of Canada 2015b). For some survivors, having their story heard by an IAP adjudicator was more important than receiving a compensation payment (Susan, Andrew, and Jason, survivors, 29 June 2016, 9 July 2016, and 31 July 2016). Even though it is difficult to imagine a set of circumstances where a rejected claim has resulted in an acknowledgement and validation of survivors’ experiences, in some cases the very fact that survivors were invited to an IAP hearing to tell their stories challenged a deep seated denial about the past: “all I know is that whatever I said was the truth and nothing but the truth and I walked out, I don’t worry about it anymore” (Jeffery, survivor, 1 August 2016). Indeed, survivors reported to have experienced a sense of relief when they had officially told

their story for the first time in the presence of a powerful adjudicator, representing the Crown: “I finally told people in authority who were asked to judge our story, I finally told my truth. And it really didn’t matter if they believed it or not” (Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016; Kevin, survivor, 18 May 2016). One of the lawyers noted that, from his experience working with survivors, the IAP hearings empowered them by compelling the adjudicators to officially record their stories: “there’s something about having people be obliged to listen to you” (Richard, IAP lawyer, 4 July 2016).

The IAP hearing process that can be empowering for some survivors as it could restore some of the dignity, recognition, and respect that was previously withheld from them (Michelle, RHSP worker, 10 May 2016). Further, it provides a stage for some survivors to engage in strategic desubjectification by building linkages between their personal experiences and structural factors associated with the Indian Residential Schools: “I want the world to see that racism doesn’t work no matter what form you use,” said one survivor who opted out of the *Settlement Agreement* (Del Riley²¹, survivor, 18 May 2016). Other survivors chose to indigenize their IAP hearings by actively incorporating traditional Indigenous practices that politicized their testimony and exposed settler colonial domination through performances of theatrical dramatization. They did so in part by foregrounding indigeneity as the central element of their cultural practices. One survivor shared with me that he had requested to hold a circle hearing, which situated his identity as a survivor and “traditionalist.”

I had a circle hearing, I made them sit around in a circle, because I said, “This is who I am now, this is what the government at the time wanted to destroy, but I still have it, I still have my language, I still have my traditions, I still have my ceremonies, I have my pipe...” (David, survivor and RHSP worker, 29 June 2016).

²¹ In this instance I use the survivor’s real name and share his story later in this chapter at his request.

This survivor's circle hearing was inspired by an Indigenous practice of sharing circles and storytelling that empowered the speaker and facilitated the expression of truth based on lived realities and experiences (Lavallée 2009; Kovach 2010). Through these displays of cultural practices, survivors reclaim Indigeneity that the Indian Residential Schools sought to destroy.

7.3 Collectivization of individual financial compensation

One of the ways in which contestation of individualizing effects of financial compensation takes place in the IAP is when survivors accept their IAP awards, but reject the official meaning attached to them, which is to compensate them for the physical and sexual abuse and consequential harm. Claire Moon's (2012) research on contestation of reparations is particularly relevant here because it provides a lens through which one could examine the range of meaning that victims of human rights violations assign to official state measures of redress. In this section I mobilize Claire Moon's insights to explore how survivors expand the meaning of individual financial compensation by adopting counter-narratives that expand the official scope of their IAP awards.

Survivors contest the limits of individual financial compensation by appropriating their IAP awards to collectivize their experiences of victimization. In her research, Moon argues in favour of abandoning the analytical and practical categories of *symbolic* and *material* reparations because what matters are victim's interpretations of the meaning of reparations. Parallel to Moon's argument, I am suggesting that IAP recipients may contest the *individual/collective* dichotomy and evaluate how this distinction becomes "immediately nonsensical at the moment of *reception* of reparation" (Moon 2012:190, emphasis in original). This process involves carefully considering and accounting for the terms of interaction between survivors and their

individual compensation payments and how they may channel their individual compensation payments into collectivized measures that address violence against their families and communities, or against Indigenous people as a group. The individual/collective dimension, as I propose, is not static and constant, but is rather responsive to the social, cultural, and political circumstances of recipients, who engage in meaning-making by producing counter-narratives that influence the “social performance” (Moon 2012:190) of their compensation payments in novel and unpredictable ways.

My interview data suggests that survivors understand their IAP awards in drastically different terms than how they are presented in individualized discourses of abuse and harm in the IAP. For many survivors, the main motivation for participating in the IAP does not necessarily reflect the mandate of the compensation process to “resolve claims of abuse” (Indian Residential Schools Adjudication Secretariat 2013b:3), but rather represents a space that is defined by survivors’ own subjectivities that have the potential to stage resistance to the deep-seated denial by expanding the scope of injustice. In particular, what is problematic about the IAP is that it compensates only direct victims of abuse rather than their families, communities, and intergenerational survivors (Dion Stout and Harp 2007). In contrast to the IAP’s approach to compensation, survivors who spoke to me about their IAP hearings regarded their IAP payments as “anti-systemic reparations” (Torpey 2006) for *collective* harms that the Indian Residential Schools inflicted, rather than as payments to them as *individual* victims of Indian Residential School violence. In particular, while the IAP compensation chart (Chapter 6) tends to construct survivors as the *only* direct victims of violence, survivors themselves often see the abuse and resulting harm in terms of the consequences for their children, families, and communities. By distributing their IAP awards in a collective manner, survivors challenge two core assumptions

of individual reparations. First, a more collectivist attitude toward compensation resists the precise identification of victims of Indian Residential School abuse and compels the recognition of victims of structural violence (Margarrell 2007; Ferstman, Goetz and Stephens 2009). Second, survivors challenge the individualist assumptions that financial compensation will “promote the recognition of individuals” (de Greiff 2006:469) and protect the rights of recipients though individual freedom and autonomy (Freeman 2008).

Collectivization of individual compensation payments highlights the need for communal, and not just individual, healing and challenges Western understanding of private property (Green 1986). Relationality is a relevant concept for exploring how the IAP awards are distributed. Specifically, members of Indigenous communities do not exist as individuals in isolation from each other in some atomistic manner, but are rather defined by relationships to each other. By collectivizing their compensation payments, survivors resist discourses of fiscal responsibility and the individualizing logic of the IAP that establishes them as liberal subjects (Henderson 2013) whose experiences of abuse are isolated from systemic economic maldistribution and inequality. A number of survivors with whom I have spoken indicated that they would engage in what Eva Mackey refers to as “relational healing” (Mackey 2013) that recognized the harm inflicted on relational networks within communities. To accomplish this goal, survivors have expressed to me their intention to pool their compensation money together to establish community healing events for all survivors, including intergenerational survivors. This approach to collectivization recognizes that the Indian Residential School system was a violent enterprise and brings attention to the continuity of its impacts in the present: “[If my IAP claim were successful], I would probably have spent it through the community. Communities need big help. That’s why we’re here” (Brian, survivor, 29 July 2016). For another survivor, his IAP payment

represented “a gift” that he used to help others in his community and those who participated in his healing journey. In other words, survivors often view their compensation payments not only in collective terms, but also as “a tool, money was just a tool, something that you use to help people, to work with people” (Charles, Elder, 15 May 2016, my emphasis).

In directing their compensation payments, survivors often consult with members of their communities, including Elders, which results in collective decision-making that further de-individualizes the IAP and maximizes the positive impact of the IAP awards: “What was I gonna do with it? Talked to my clan sister about it” (Charles, Elder, 15 May 2016). Community-based decision making in relation to the re-distribution of the IAP awards highlights the role of knowledge keepers, traditional healers, and teachers who provide advice that could benefit the community as a whole (Aboriginal Justice Implementation Commission 1999). One survivor and former chief shared with me that a settlement should really “look at language development and to deal with all the mental and health problems that came about through stress, through anxiety, and trauma in their lives, and that still exists” (Donna, survivor and former chief, 15 May 2016). According to one RHSP worker, the negative consequences of individualized payments are quite profound on Indigenous communities. The collective character of communities is compromised when financial compensation payments create divisions between recipients and non-recipients of IAP awards:

It drives wedges between the people that get the money and people that don’t have any money. It starts to become an “us and them,” like a two tiered-community where they don’t share, then people start getting jealous, and if you look at the traditional values of our people, when somebody killed a moose, or killed a deer or an animal, then the whole community thrived because the whole community shared. The notion of not sharing within a community goes against the Seven Grandfather Teachings and is non-Indigenous (Pamela, RHSP worker, 15 September 2016).

Collectivization and communalization of IAP payments also takes place on a more personal scale – as both symbolic and material reparations – that survivors offer their children.

Survivors use their IAP awards as a means to apologize to their children for the absence of parental skills: “My actual amount was \$152,000. So I divied it up, gave it to my kids. Cash. I said, ‘I don’t know how to say “I’m sorry this happened,” but I worried about my problems, you know.’ And they knew and understood so...it worked good with them” (Jeffrey, survivor, 1 August 2016). As one adjudicator succinctly noted, these acts of contrition constitute intergenerational “personal reconciliation projects” between survivors and their children (Sean, IAP lawyer, 18 May 2016). Survivors emphasized the material dimension of their IAP compensation payments by directing them to address the socio-economic disadvantages that their children had to face growing up because the Indian Residential Schools set up their parents for financial failure:

Probably 90% of them didn’t keep a penny of that, they gave it to all to their children. *And these people, they lived in poverty their whole entire lives, and they’ve never been able to give their children anything.* And the great pride that they felt, that money I’m going to buy a snow machine for my son. I’m going to buy my kids a truck so they can go hunting. The pride in which they felt they could finally give their children something (Linda, RHSP worker, 13 June 2016, emphasis added).

Not only do survivors strategically resist the financial compensation’s individualizing tendencies, but also *indigenize* it by infusing their compensation payments with cultural meaning that, in addition to expanding the scope of injustice, enriches them with Indigenous worldviews:

[Survivors] know the money has spirit, and the spirit of the money is intended to go around. What goes around comes around is a saying of the Cree, and has been for eons. So the spirit of the money will go around and come back, if you help someone, it’ll come back, if you spend something, it will come back to your community (Michelle, RHSP worker, 12 May 2016).

Survivors also use their payments to de-commodify suffering and to challenge discourses of fiscal responsibility that I described in Chapter 4. While they are often expected to adhere to a particular way of spending their IAP awards in accordance with settler colonial institutional practices that include saving and investing money, many of them choose to resist the prescribed

narratives that depict “the White man’s way” as righteous, divine, and exceptional (Collins 2011):

White man puts it in the bank, and he wants the highest pile in the land. And that’s how he measures his success. And how much interest they gain, and how much tax credits they’ll get. *That’s not what money’s meant to do* (Michelle, RHSP worker, 12 May 2016, emphasis added).

7.4 Resisting closure through truth-telling

One of the ways that survivors transform the meaning of their IAP awards is by refusing to accept premature closure that the IAP awards are designed to ensure. Closure in the IAP is reflected in the spirit and intent of the compensation chart that I discuss in the previous chapter, which draws boundaries around what constitutes compensable violence. By compensating only acts of physical and sexual abuse and consequential harm, the IAP assumes that the impact of Indian Residential School violence is not ongoing, is limited to its immediate victims, and wrongly relieves the perpetrators of responsibility once the survivors have been paid off (Simpson 2011). Survivors challenge the official meaning of financial compensation at their hearings by constructing counter-narratives in relation to the IAP’s temporal discourses by “speaking back” (Moon 2012:189) against them.

Survivors resist closure through truth-telling practices that challenge the legal and objective foundations of truth about the impact of physical and sexual abuse that the IAP is designed to solicit. Resistance takes place in the form of sharing of socially constructed, experiential, and relational truths (Wilson 2001b) about the realities of violence they suffered. In this respect, survivors constitute themselves as political beings when their testimony transcends the prescribed boundaries: “Well you know what, this is important to me too, like I want to talk about it because this is what happened and I want it down on paper” (survivor’s words recounted

in a conversation with Lisa, RHSP worker, 5 July 2016). Survivors mobilize their hearings to bring attention to what the IAP considers peripheral, contextual, and secondary²² factors that are secondary in importance to the physical and sexual abuse. When viewed in this way, the physical and sexual abuse represents merely an incentive for survivors to share their stories, who then transform their IAP hearings into spaces of resistance.

Other survivors use their hearings to challenge the permanence of their statuses as victims of sexual and physical abuse assigned to them by the IAP that threatens to allow “*colonization* to be the only story of Indigenous lives” (Alfred and Corntassel 2005:601, emphasis in original). The process of resistance transcends the state of victimhood and mere acts of survival by creating counter-narratives of what Gerald Vizenor refers to as “survivance,” which denotes an “active sense of presence, the continuance of native stories, not a mere reaction, or a survivable name” (Vizenor 1999:vii). When combined with emancipatory potential and empowerment, survivance presents survivors with means to enact practices of desubjectification aimed at challenging “psycho-affective facets of colonial domination” (Coulthard 2007:456). As one survivor and traditional healer shared with me, he learned from his experiences working with other survivors that many of them mobilized their IAP hearings to shed their identities as products of Indian Residential School experiences and to begin their lives as cultural and spiritual beings. For him personally, his IAP hearing allowed him to move beyond the abuse he experienced and to re-constitute himself as someone who is more than a survivor in an effort to reclaim his indigeneity and pre-colonial identity: “I’m a survivor, but not a survivor, now I’m back to who I am. I’m a Cree guy, a Muskeg, you know, I speak my language, I do my ceremonies” (David, survivor and RHSP worker, 29 June 2016). By

²² I describe non-compensable testimony in Chapters 4 and 6.

reclaiming their identities, survivors simultaneously “purge the psycho-existential complexes battered into them over the course of the colonial experience” (Coulthard 2007:450).

In my interviews I have also learned that some survivors could achieve the status of “thrivers” (Clyde, survivor and leader of an Indigenous advocacy organization, 30 September 2016), which is a concept that carries cultural significance because it resembles Vizenor’s concept of survivance and denotes a shift from victimhood to resurgence and reclamation of Indigeneity. As one RHSP worker observes from her experiences in the IAP, thrivers are former students who are on the path to recovery, and in this process empowerment plays an important role in overcoming childhood trauma (Carol, RHSP worker, 6 July 2016). The idea of “thrivers” is particularly relevant and valuable in the context of the Indian Residential Schools compensation because it reconstitutes and revitalizes Indigeneity (Prince Albert Grand Council Health & Social Development 2015; Narine 2017). Thrivers engage in healing strategies and take action to improve their wellbeing as a means to “overcome whatever it is that they went through” at the schools (Anna, RHSP worker, August 2016).

7.5 Resisting the IAP through opting out and refusal to participate

Some survivors chose to resist the settler colonial ideologies of the IAP and to opt out of the Settlement Agreement altogether (Popic 2008). In total, about 340 former students opted out of the *Settlement Agreement* (Indian Residential Schools Resolution Canada 2007), and one of these survivors was Delbert (Del) Riley. In response to the IAP’s lack of recognition of violence beyond the physical and sexual abuse, Mr. Riley decided to opt out of the *Settlement Agreement*, to develop his own compensation models, and to pursue legal action against the Government of Canada and churches by means of an individual lawsuit. For Mr. Riley, the IAP represented an

unjust process that was unilaterally established by the federal government that essentially stacked the odds against the survivors. His refusal can be characterized as a critique of the official process, which is a politically significant act as it “*refuses* the authority of the state” (Simpson 2007:74, emphasis in original).

In my conversation with Mr. Riley, I learned that part of his motivations for rejecting the IAP included its non-recognition of the intergenerational impacts of the Indian Residential Schools on his children, breach of trust, breach of fiduciary duty, and cultural genocide: “here’s the problem with the IAP: they had about 4-5 items you could use. I figure I’ve got 70 or 80 agenda items to discuss and to put a price on” (Del Riley, survivor, 17 May 2016). Ironically, the items in Mr. Riley’s statement of claim resemble the elements of the lawsuits, including *Cloud*, *Dieter*, and *Baxter*, which the *Settlement Agreement* settled. Mr. Riley pointed out to me that the IAP did not represent an appropriate measure to address the systemic violence that the Indian Residential Schools inflicted on Indigenous families and communities. Indeed, at the negotiations of the Settlement Agreement and the IAP in particular, the government’s opposition to recognize the mandate of the Indian Residential Schools to commit genocide through assimilation was indicative of denial and depoliticization of violence that was inherently political: “the word ‘genocide’ was not welcome in any governmental level, they refused to accept that word” (James, survivor and leader of an Indigenous advocacy group, 7 June 2016). To this end, Mr. Riley’s lawsuit appears to challenge the “statist forms of recognition” (Simpson 2007:78) and perform a generative function that bring attention to the previously hidden histories and makes claims what he considers needs to be included in the framework of justiciable Indian Residential Schools violence.

A number of survivors with whom I have spoken chose to engage in other resistance strategies that did not go so far as opting out of the *Settlement Agreement*, but rather encompassed non-participation in the IAP either by forfeiting their right to file a claim or by withdrawing their claims in progress. As I have argued in the Chapter 5, the IAP constitutes a violent process that posed a risk of victimization to survivors. In their encounters with the Canadian court system, survivors develop an aversion to the “political structures and judicial system” that often revictimizes them (Jessica, RHSP worker, 27 June 2016). Indeed, survivors’ reluctance to participate in the IAP stems from their mistrust in a process set up by “white people. And they listen to it and it just sounds like another white person process and they’d be hurt again” (Sarah, IAP lawyer, 8 June 2016). As a result, many survivors chose to abstain from the IAP because the application and hearing process threatened to revictimize them as they required them to “re-live those things when they have to write down your story” (Helen, survivor, 10 May 2016).

7.6 Theorizing the RHSP workers as agents of resistance

Up to this point in this chapter I have focused primarily on survivor agency and how it animates practices of resistance. However, survivors are not always alone in their struggle because they sometimes find allies among RHSP workers who side with them in challenging the unjust power relations in the IAP. Before proceeding with my analysis of the role of RHSP workers as agents of resistance, it is imperative to make two preliminary comments. My first comment is in relation to a theorization of their role in the IAP. On the spectrum of oppression and domination in which survivors occupy the most marginalized positions and the legal experts are the least marginalized and most socially advantaged, RHSP workers share a number of qualities of both of these

populations. On the one hand, they represent the interests of the settler colonial order and occupy the role of IAP administrators and stakeholders, who operate within the strict parameters assigned to them by the IAP and Health Canada. As I have argued in Chapter 4, RHSP workers engage in performative labour by preparing survivors for the hearings, which involves strategies of transformation of survivor into subjects of Canadian law. On the other hand, the approaches used by the RHSP workers are often informed by an understanding of Indigenous cultural practices, holistic and spiritual worldviews, and survivors' lived realities and experiences. While in the previous chapters of my dissertation I criticized RHSP workers for contributing to the reproduction of unjust power relations in the IAP, my analysis in this section explores how RHSP workers mobilize the IAP hearings in ways that de-commodify survivors' experiences and mobilize that space to empower survivors.

My second comment clarifies the role of the RHSP workers in relation to their function of resistance. It may seem from the following discussion that their resistance strategies merely reinforce survivors' subordinate position in the IAP and fail to transform its foundations embedded in relations of domination and oppression. Indeed, the RHSP worker *do*, in fact, prepare survivors to "play by the rules" in order to receive an IAP award by making the IAP a less hostile enterprise and a more humane process, and by reducing the risk of survivors' revictimization. In this view, their work is not necessarily decolonizing in that it does not seek to trigger "the bureaucratic, cultural, linguistic and psychological divesting of colonial power" (Tuhiwai Smith 1999:98). Rather, the RHSP workers recognize that the IAP presents an opportunity for survivors to tell their stories and to receive validation of their experiences. The role of the RHSP workers, in turn, is to "work from the inside" and to contribute to survivors' success at the hearings, while at the same time participating in resistance.

One of the transgressive qualities of RHSP workers originates from their role in the IAP as “status-coaches” (Rock 2002) whose task is to assist survivors with health and cultural support services in order to maximize their likelihood of success at the hearings. To this end, RHSP workers are complicit in reproducing discourses of victimization and victimhood with which survivors must comply in order to receive an IAP award. Upon initial examination, their function in the IAP complements that of the IAP lawyers, who are financially motivated by and invested in survivors’ success at the hearings. However, there are some important differences in the motivation of the lawyers and RHSP workers in helping survivors to achieve success. The RHSP workers, who are sometimes assigned to assist survivors in advance of the hearings, also engage in coaching strategies and provide legal advice to survivors, and they do so at their own risk, but not for their own financial gain. In fact, RHSP workers do not benefit financially from survivors’ success at their IAP hearings; rather, their salaries are funded by Health Canada’s Indian Residential Schools Resolution Health Support Program (Government of Canada n. d.). So what are these coaching strategies and legal advice, and how do they empower survivors and resist the unequal playing field of the IAP?

One of the strategies RHSP workers mobilize to empower survivors is to align their testimony with the legal requirements of the IAP, which includes managing survivors’ emotions and channeling them in a constructive manner in order to secure an IAP award. RHSP workers ask survivors to refrain from “lashing out [at the hearing], it’s...not a shouting match” and to answer question in a “yes” or “no” manner if appropriate, as well as to respond “I don’t remember” in their applications or at the hearing if survivors legitimately do not know the answer (Donald, survivor, 14 May 2016). Essentially, the RHSP workers ask that survivors play by the rules and share their testimony at their hearings in ways that conform to the expectations

of the lawyers and adjudicators, and to tell them “the kinds of things they want to hear” (Jason, survivor, 1 August 2016). In other words, RHSP workers empower survivors with social scripts of acceptable modes of interaction between them and legal professionals (Matthew, survivor and RHSP worker, 11 May 2016). By coaching survivors on appropriate responses, the RHSP workers shift the odds of winning in favour of survivors in a legalistic and complex process that was established for navigation by the legal practitioners, rather than by survivors, and coaching gives survivors a “leg up” in their fight for compensation.

At the hearings, Indigenous RHSP workers establish culturally appropriate protocols that allow them to “perform” indigeneity and partially reclaim their cultural traditions that empower survivors. Culturally competent Indigenous RHSP workers embody the spiritual energy that Indigenous people are often thought to share among themselves, and their presence at the hearings often frames survivors as spiritual beings and challenge the settler colonial legal practices of the IAP (Michelle, RHSP worker, 10 May 2016). The RHSP workers channel spiritual energy is through the use of humour in preparations for a hearing: “it’s a good [strategy] because before we go [into a hearing], we laugh about it. Not laugh about what’s going to happen, but laugh is where we talk, you know, talk about supporting each other” (David, survivor and RHSP worker, 29 June 2016). The use of humour is an essential component of aftercare as well, when RHSP workers engage survivors in a process referred to as “walking them back out” that involves:

Laughing at them...talking to them about different things to off-subject like when’s your birthday, when’s your anniversary, how many grandchildren do you have? And it slowly brings their mind back to the present state. And that can take some time, could happen very quickly, especially if they have their own supports, like their wife or sister, or brothers along with them for the hearing, staying in the same hotel overnight, so we know they’re ok, they have supports (Michelle, RHSP worker, 10 May 2016).

The act of walking survivors out after they have given their testimony takes place when they

establish a spiritual connection with their “spirit child,” which represents a pre-colonial identity of survivor that existed before it had been blocked by the settler colonial institutions, such as the Indian Residential Schools (Matthew, survivor and RHSP worker, 31 July 2016). RHSP workers assist survivors with challenging the settler colonial power that has historically suppressed and continues to suppress their cultural identities, and with reclaiming their identities:

Because they told us that spirit, Anishinaabe/Cree people, that spirit had no identity, it’s Cree, that you gotta make that spirit White in order for it to grow, it has to be baptized and blessed, walked in the blood of Jesus, all that other stuff, and to us it doesn’t make any sense (Matthew, survivor and RHSP worker, 31 July 2016).

The very presence of Indigenous RHSP workers at the hearings appears to transform the formality of the hearing into a space that fosters Indigenous solidarity with survivors that creates an environment that is more welcoming and hospitable for expression of their suffering. One Indigenous RHSP worker shared with me that often the majority of the individuals occupying the hearing are non-Indigenous and “some [survivors] come in, very angry, and because the person sitting at the table is a white person” (Matthew, survivor and RHSP worker, 12 May 2016). This situation may seem threatening to survivors, and therefore “having another brown face in the room was very comforting to their spirit, because the way we always say it is, ‘It’s hard to sit there and tell the ancestors of those that abused them what happened to them as a child’” (Michelle, RHSP worker, 13 May 2016). The presence of Indigeneity helps survivors to overcome the silence and gives them voice that settler colonialism has historically attempted to take away from them (Mackey 2013).

RHSP workers also empower survivors in a more tangible way, and that is with defending them against the overzealous and aggressive lawyers representing the Government of Canada and churches at the hearings, who at times treat survivors with condescension and as a “bunch of Indians” (Michelle, RHSP worker, 13 May 2016). By standing up for survivors and

resisting the aggressive and persistent intimidation tactics employed by the lawyers, the RHSP workers subvert the reproduction of settler colonial relations at the hearings. In one case, the RHSP worker acted on behalf of a survivor by turning to the adjudicator to demand recognition and respect from a lawyer representing the church: “Could you ask that lawyer to sit down? This is not Perry Mason. This is not a court of law here” (Michelle, RHSP worker, 13 May 2016). This request reconstituted the IAP hearing into an informal and non-confrontational space that it was originally designed to be and rebalanced the power relations between the lawyer and survivor (Michelle, RHSP worker, 13 May 2016).

7.6.1 Resistance to symbolic and bureaucratic violence

The RHSP workers often make attempts to resist or circumvent the legalistic dimensions of the IAP related to privacy and confidentiality provisions that inflict bureaucratic violence on survivors (Graeber 2015). As I have argued in Chapter 4, the IAP establishes various protocols that define the timeframe within which RHSP workers are permitted to make contact with survivors for the purposes of health and cultural support in advance of their hearings. The RHSP workers often consider this timeframe inappropriate because it stipulates that contact can be made only immediately prior to the hearing, which does not allow sufficient time for RHSP workers and survivors to establish a meaningful connection and to build a bond of trust. As well, RHSP workers are expected to cease contact with survivors and depart promptly after the hearings, which often leaves survivors with open wounds and untreated trauma after delivering their testimony to the IAP adjudicator.

To resist these harmful elements of the IAP, RHSP workers often mobilize their assigned roles as support personnel to empower survivors in ways that recognize the dangers of

revictimization that the act of sharing testimony often poses. In particular, RHSP workers engage in practices that are commonly known as “continuity of care” (Gulliford, Naithani and Morgan 2006) that deliver health and cultural support services to survivors before, during, and after the hearings, and expand the existing temporal dimensions of the IAP’s health support guidelines. The night before the hearings, RHSP workers often try to guess survivors’ identities and approach them in order to introduce themselves and alleviate some of the anxiety and fear survivors may be experiencing before testifying at their hearings (Sandra, survivor and RHSP worker, 12 May 2016). After the hearings have concluded, some RHSP workers take initiative to follow up with survivors after they return to their home communities to monitor their well-being and provide them with additional emotional and cultural support in the aftermath of their IAP hearings: “I make sure to call them...to do a follow up to see how they’re doing, where they’re at, and to continue that ongoing support and encourage them to find some kind of help that will support them...in their community” (Kristin, RHSP worker, 5 July 2016).

The RHSP workers also challenge the bureaucratic violence of the IAP by disavowing the protocols designed to minimize the interference of RHSP workers in the delivery of survivor testimony, which include maintaining silence and ceasing all communication with survivors at the hearings. Ironically, these very protocols often interfere with the delivery of testimony because they prevent RHSP workers from providing health and cultural support to survivors when they need it the most. To overcome the bureaucratic violence of privacy regulations, RHSP workers often collaborate with survivors to develop an improvised communication system that subverts the formal rules of the hearing. One of these strategies includes non-verbal communication: survivors make eye contact with their RHSP workers to notify them if they need a break and RHSP workers speak up on their behalf:

It was difficult [to provide support to survivors], because you can't talk. You have to maintain silence. But absolutely, usually it was just a matter of just...sometimes it as holding their hand or making sure they had Kleenex, or just eye contact, sometimes when it was clear that they were overwhelmed, then you can kind of put your hand up and ask for a break (Anna, RHSP worker, 5 August 2016).

By taking these actions, the RHSP workers not only seek to empower survivors to take control of the hearings, but they also draw on their authority as stakeholders in the IAP to engage in knowledge construction about survivors' wellbeing and potential for revictimization. As one Indigenous RHSP recalls, she was able to pick up on the emotional cues from survivors at the hearings in order to provide support and to act on their behalf to request a recess: "I could read people, like I knew if tears were forming" (Melissa, RHSP worker, 31 July 2016).

7.7 Conclusion

In this chapter I discussed how survivors mobilize their IAP hearings as spaces of resistance to highlight the continuities of Indian Residential School abuse, challenge the deep-seated denial about the impact of abuse, and politicize its consequences through desubjectification and theatrical dramatization. Resistance strategies challenge the individualistic tendencies of the IAP hearings and reconstitute them as political spaces. I have also examined how survivors mobilized their financial compensation awards in ways that transformed the official range of meanings that they were intended to carry. Survivors collectivize their awards in order to bring attention to structural violence that individual financial compensation is incapable of recognizing.

Survivor testimony plays a central role in the staging of resistance at the IAP hearings. Its primary element consists of truth-telling practices, embedded in survivors' experiences and realities, which serve as a means through which they resist untimely closure and seek to shed the identities that the IAP assigns to them. Truth-telling practices politicize the objectives of the

Indian Residential Schools and expand the scope of the injustice beyond sexual and physical abuse, and re-establish indigeneity by re-valuing it as an essential cultural attribute that settler colonial policies, including assimilation, seek to destroy. Other methods of resistance include refusal to participate and opting out of the IAP, which are invoked as gestures of non-compliance to the unjust logics of the IAP that revictimize survivors, fail to recognize the impact of the Indian Residential Schools, and perpetuate denial of systemic violence.

The RHSP workers present unlikely allies for survivors in the IAP because of their primary and official function as agents of the state, yet they mobilize their role in the IAP to indigenize the hearings, to empower survivors, and to protect them from revictimization by the lawyers, adjudicators, and the compensation process in general. RHSP workers engage various strategies of resistance, such as coaching and providing survivors with legal advice, which are frowned upon by the legal professionals, yet they have the potential to level the playing field for survivors, who are the disadvantaged parties in the IAP from the start.

Chapter 8: Conclusion

“I’m not in it for the money” – Johnny Saylor, Survivor and Elder, Chapleau Cree Nation

8.1 Overview of the dissertation’s key ideas and concepts

Research on the IAP remains urgent in the wake of a recent decision by the Government of Canada to reopen 240 previously rejected claims of Indian Residential School abuse across Canada (Canadian Broadcasting Corporation 2018). The Independent Assessment Process (IAP) is a product of settler colonial violence that represents a direct assault on indigeneity that revictimizes survivors, perpetuates denial of injustice, and constructs typologies of violence and harm that are based on Western understandings of the body, health, and money. The IAP’s approach to the adjudication of Indian Residential School abuse frames survivors’ experiences exclusively in relation to sexual and physical violence and individualizes the totality of their suffering as former students. As a culturally inappropriate process, the IAP interpellates survivors with liberal ideals of autonomy, individual freedom, and private property, and unjustly treats them as settler Canadians whose suffering can be measured based on universal moral ideals. As such, it represents a tool of assimilation that transitions survivors to elimination as Indigenous subjects, and paradoxically, simultaneously maintains their marginalized status and entrenches the dominance of Canadian law over them. The IAP has left many survivors disempowered and wondering whether they would have been better off without it.

The IAP victimizes and revictimizes survivors at every stage of the process.

Victimization begins with survivors having to recall and relive traumatic experiences of their childhoods when deciding to file their applications. The IAP application form forces survivors to frame their stories of abuse in ways that comply with the spatial and temporal arrangements that

the Canadian legal system imposes on them. The application form inflicts bureaucratic violence on survivors as it forces them to re-interpret and express their experiences through a series of pre-arranged checkboxes and spatially-limited comment sections that do not entirely capture the violence that survivors have suffered.

Through the selection process that privileges survivors who have suffered extreme, “repeated, and persistent” sexual violence and “serious dysfunction” (Indian Residential Schools Adjudication Secretariat 2013b:15, 19), the IAP lawyers victimize survivors by commodifying their suffering because they hold the power to determine who has been injured enough to deserve their legal representation. The contingency fee model, on which the IAP is based, situates lawyers as gatekeepers and encourages them to solicit primarily claimants that they consider “ideal.” These claimants are survivors who have suffered severe acts of abuse and harm, yet who are also articulate enough to express them logically to the adjudicators, and therefore to generate a financial award, a significant portion of which goes to the lawyers. At their hearings, survivors are threatened by the confrontational adjudicators and lawyers who remind them of the criminal court process in which they often participate as defendants. The adjudicators victimize survivors by dismissing their subjectivities and their interpretations of violence and replace them with multi-tiered and rank-ordered categories of victimization based on the compensation chart rather than categorically condemning institutionalized sexual and physical violence. After their hearings, survivors are often faced with the adjudicators’ decisions to reject their claims, which for many survivors is synonymous with not being believed and victimizes them by invalidating their suffering. Successful claimants, in turn, are revictimized by their compensation payments. Consequently, for many survivors the IAP represents a process that causes more problems than it is designed to resolve.

By presenting the physical and sexual abuse as the only compensable violence, the IAP constructs hierarchies of victimization and victimhood based on Canadian legal standards that reflect a narrow and limited scope of injustice, and wrongly simplify, filter, and hide the complexity of the Indian Residential School experience. The IAP considers survivors' knowledge about their own experiences of victimization as secondary information, treats it with epistemological suspicion, scepticism, and disbelief, and subjects it to verification and validation by third-party experts and professionals. The Western-centred biomedical model and official institutional records comprise the "hierarchy of legitimacy" that these actors use in their assessments of survivors' physical and mental health. Their judgement is considered objective, trustworthy, and evidence-based, and constitutes the standard against which the credibility and reliability of survivors as witnesses of their experiences are measured.

In response to the individualizing and violent logics of the IAP, survivors have begun to mount resistance that seeks to challenge and undermine the IAP's hegemony. Survivors contest the meaning of their individual financial compensation awards by collectivizing them through distribution of money to their families and communities in order to bring attention to the structural violence of settler colonialism. Other survivors choose to opt out of the IAP because they view it as an unjust process, or to withdraw their applications because of the risk of revictimization. Still others make attempts to indigenize their hearings through cultural practices and to mobilize their hearings to tell the truth about the Indian Residential Schools in its entirety rather than through the narrow and legalistic framework that the IAP imposes on survivor testimony. In survivors' struggle against the hegemony of the IAP, the Resolution Health Support Program workers sometimes act as allies who seek to empower survivors, to level the playing field of the IAP, and to protect survivors against overzealous lawyers and adjudicators.

8.2 Reflections on the research process

In the course of conducting my dissertation research, I sought to answer my research questions in a manner that permitted me to engage in reflexive practice with my interview participants. When I participated in conversations with Murray Crowe²³ and other Indigenous participants, we exchanged stories and experiences, because as Margaret Kovach reminds us, being mindful of one's self-location and "sharing one's own story is an aspect of co-constructing knowledge from an Indigenous perspective" (Kovach 2009:100). My reflexivity as a researcher played an important role in exploring my social location – a middle class white male, recent immigrant, and a member of a settler colonial academic institution – and it influenced the knowledge production in my dissertation (Dei 2006). In my interviews with survivors I considered the multiplicity of truths embedded at the intersections of my social location and knowledge I sought to generate, and how these intersections are mediated by power relations between survivors as "knowers" and me as an "outside researcher" (Potts and Brown 2005:263). These truths compelled me to re-examine how my knowledge was constructed in relation to the IAP and to re-evaluate my expertise in the social and political space that my dissertation occupied. After all, I was no longer the "expert" and it was survivors' experiential knowledge that encouraged me to reconsider my existing views on reparations, Indian Residential Schools, and financial compensation. By positioning survivors' stories as legitimate sources of knowledge, I strived to create a space for marginalized voices to speak their truth and open possibilities to reveal "new truths about the past" (Kempf 2009:27-28). In concrete terms this meant that my responsibility was to ensure that knowledge was co-produced rather than extracted and that Indigenous participants were treated with epistemic privilege and respect (Kovach 2005).

²³ I shared Murray's story in Chapter 1.

During my fieldwork I was constantly reminded of my positionality as I held conversations with different populations of participants. Differential levels of empowerment continued to structure my interactions with Indigenous participants who used terms such as “white society,” “settlers,” and “genocide” in their stories that reminded me of my settler colonial privilege and that I had never experienced or would experience the racism that they have endured in their lifetimes. My identity as a colonizer became even more apparent as I was recruiting IAP lawyers and adjudicators for interviews, who made assumptions about me as their peer, fellow expert, and a future educator. I became acutely aware of my privilege and unequal levels of empowerment in the course of my interviews with survivors, many of whom developed aversion to authority after attending Indian Residential Schools and internalized their inferiority in relation to settler colonial administrators, including the legal system and state institutions. After reflecting on these considerations, I found myself occupying a social position that was characterized by two seemingly opposite elements. On the one hand, I acted as a representative of a settler colonial academic institution, but on the other, I understood my role in the research process as an accomplice (Indigenous Action 2014) who stood against settler colonial exploitation and domination.

In my reflections on the interviews with Indigenous participants, I followed the teachings of Leanne Simpson (2004:381) that reminded me that decolonizing methodologies involved “challenging research that conforms to the guidelines outlined by the colonial power structure.” To this end, the interviews encouraged me to question my epistemological assumptions and ontological position in relation to my knowledge about reparations and settler colonialism: what did I know and how did I know it? Survivors’ stories highlighted the urgent need to decolonize research on reparations and compelled me to critically examine how my knowledge “shaped and

influenced research findings” (Rix, Barclay and Wilson 2014:3) and claims I was able to make about the IAP. The interviews invited me to situate my academic knowledge in relation to Indigenous participants’ lived realities, experiences, and worldviews as fundamental features for understanding the IAP in the settler colonial context.

Prior to approaching survivors for my dissertation interviews, I was concerned that my status as a recent immigrant, including my Eastern European accent along with my foreign sounding and difficult-to-pronounce name, would pose significant barriers with respect to recruitment, considering the fact that I would be asking questions related to the IAP and that indirectly touched on the issues of physical and sexual abuse. In my mind, I had imagined that survivors’ reactions to my requests for interviews would trigger hostility, ambivalence, or refusal because of my identity as settler and recent immigrant. I was pleasantly surprised when my encounters with survivors turned out to be quite the opposite. I was welcomed with open arms into their communities (Chapleau Cree First Nation, Spanish River Indian Reserve, Sagamok First Nation, Garden River First Nation, Batchewana First Nation, and Rankin Indian Reserve) and many survivors were interested in learning about my life in Canada as an immigrant and sharing their teachings with me. In a strange way, I felt a sense of solidarity with them despite my privilege and social status that was seemingly at odds with indigeneity.

8.3 Key contributions

My study of the IAP sought to innovate, complexify, and decolonize critical victimology by mobilizing its concepts and ideas that have not readily been applied in order to investigate violence against Indigenous people in a settler colonial context. My analysis repurposed the critical victimological concept of the “hierarchy of victimization” to examine how the IAP

privileged the experiences of violence of some survivors (“ideal” victims) and devalued others (“difficult” victims). In contrast to how traditional critical victimology establishes “ideal” victims as vulnerable, innocent, and weak, I explored “ideal” victims in the IAP as credible and reliable witnesses who could testify to the own experiences. The IAP constructs what one could conceptualize as the “hierarchy of legitimacy” that represents the process through which experts with constitutive power subordinate Indigenous subjectivities and interpretations of their experiences of abuse. In their place, the IAP establishes Western epistemologies, such as the biomedical model, as the dominant framework through which it evaluates the severity and extent of injuries and their impact.

While traditional critical victimology is largely silent with respect to the monetization of violence, my dissertation explored how lawyers in the IAP often regulated access to victim status by constructing the experiences of “ideal” victims in a commodified, objectified, and essentialized manner to secure relatively high financial pay outs at the hearings. Further, I have argued that the IAP enables the construction of the “hierarchy of losses” that accounts purely for financial losses and damages, which at the same time discounts the violence that results in other types of losses that are not easily enumerated, itemized, and compensated because they do not readily conform to the prescribed legal narratives of victimization and victimhood.

My dissertation also makes contributions to research on reparations for Indigenous people. The literature on financial compensation or reparations more generally does not readily acknowledge or recognize the unique and profound types of violence and consequences that Indigenous people often face as a result of state-sponsored atrocities. My analysis of the IAP shows that individual financial compensation for violence in a settler colonial context individualizes the magnitude of atrocities, hides ongoing violence, interpellates survivors with

liberal ideals, and perpetuates denial of ongoing violence, all of which further revictimize survivors. My study builds on settler colonial studies literature to expose how reparations may act as a conduit through which settler colonial power oppresses, dominates, rules, and subjugates Indigenous people. Through my analysis of the IAP compensation chart, my dissertation enriches the reparations literature by generating an account of how it functions as a discursive tool that represents and constructs acute and visible violence in the form of physical and sexual abuse as compensable, legitimate, and suitable for transvaluation, while at the same time hiding other types of violence and harm that survivors have suffered.

My dissertation also enriches research on reparation by examining the IAP as a violent process. Contemporary literature on reparations does not directly examine how reparations may inflict violence on their recipients. In fact, the majority of research on reparations seldom questions how a reparations process could potentially reproduce the unjust relations between the perpetrators and victims. My analysis articulates how a process of financial compensation that is administered in a settler colonial context inflicts symbolic violence on survivors, which reinforces, naturalizes, and legitimates the settler colonial status quo and settler colonial ideologies. I develop the term “temporal violence” to denote a modality of symbolic violence that forces survivors to participate in the compensation process that is culturally inappropriate and is designed and executed according to settler colonial temporal standards and represents a tool of assimilation. My research shows that reparations may inflict bureaucratic violence that forces survivors to restrict the expression of their experiences and realities to a series of prearranged and predetermined options that hide the magnitude of atrocities and their suffering.

My dissertation research also mobilized elements of settler colonial studies to make a contribution to the fragmented and limited body of literature on reparations in the areas of

contestation and rejection of reparations, victims' agency to transform the meaning of reparations, and resistance strategies that enable transgressive politics. My analysis demonstrates that survivors of state sponsored violence may resist and contest the dominant ideologies and hegemony of reparations through multiple strategies of resistance. Notably, survivors choose to reject reparations because they fail to recognize the extent of the violence and its consequences. Other survivors appropriate their compensation hearings to bring attention to the structural violence that reparations are unable to address, to re-establish indigeneity, and to resist untimely closure. Survivors may also harness their individual compensation payments by collectivizing their scope that involves distributing compensation to non-recognized victims, which expands the scope of reparations.

8.4 Moving forward: alternatives to the current compensation model

As a modality of financial compensation, the IAP represents an imperfect system that occupies a paradoxical space. On the one hand, the IAP will never adequately and fully compensate survivors of Indian Residential School abuse because it is unable to account for the totality of their experiences; yet, on the other hand, it is important to recognize that leaving survivors uncompensated is also not an option. Many survivors have shared with me in the course of my research that they saw financial compensation as an important part of acknowledgement and recognition of their experiences. I offer several insights that I developed in the course of my dissertation research that might be helpful in building a more just and fair financial compensation process.

The first insight is in relation to intergenerational survivors of abuse. The current IAP compensation model individualizes sexual and physical violence and its consequences by

compensating only direct survivors (former students). As a result, intergenerational survivors of abuse, including former students' families and communities, are left out of the compensation process. The effects of intergenerational trauma are quite profound and include domestic violence, the inability to parent, high rates of suicide, and widespread substance abuse (Bombay, Matheson and Anisman 2013). My research suggests that there is a need for a model of reparations that recognizes the impacts of abuse and harm would extend beyond the experiences of immediate survivors and require a collective dimension that de-individualizes violence. This model would provide benefits that extend beyond financial compensation and could include collective material measures in the form of in-kind reparations or "service packages" (de Greiff 2006) that might contribute to satisfying the justice needs of intergenerational survivors. One advantage of developing such a model is that it would account for the ongoing consequences of violence in the present, move beyond the physical and psychological dimensions of abuse, and materially address the social issues associated with the Indian Residential School experience.

The second insight is that de-commodification of survivor testimony and experiences may contribute to addressing the dilemma that abuse and harm must be compensated, yet any measure of compensation will always fall short of *fully* compensating survivors. By de-commodification I refer to the process that partly, but not entirely, divorces the experiences of violence from the financial value that is placed on them. I would like to make two observations with respect to de-commodification. First, as I argue in Chapter 6, the financial value of violence and its consequences in the IAP is directly proportional to its perceived severity and harm. This approach to accounting for injuries has been problematic for many survivors because it objectifies their experiences, individualizes them, privileges certain types of abuse over others, and causes survivors to interpret the severity of injuries in financial terms. Two interview

participants, both of whom were Indigenous RHSP workers, shared with me that many survivors expressed to them that they simply wanted to have their stories heard and acknowledged (Kristin, RHSP worker, 5 July 2016; Matthew, RHSP worker, 11 May 2016). A compensation process that incorporates elements of active listening to survivors' stories and awards them with payments may symbolize an acknowledgement of their experiences. It could provide them an opportunity to mobilize IAP hearings as a forum (or sharing circles similar to those that the Canadian Truth and Reconciliation Commission held) for expressing their experiences without having the adjudicators transvalue their stories in a standardized manner as the compensation chart currently does. De-commodification of survivor testimony and experiences would, to an extent, recognize the intrinsic value of their stories, avoid the pitfalls associated with proportional transvaluation, and materially acknowledge survivors' suffering. A forum-based model for compensation hearings would also question the role of lawyers in the process and whether their presence is entirely necessary.

The forum approach could mobilize Indigenous legal principles, knowledges, justice systems, and conceptions of power that could serve as the basis for an alternative, non-adversarial compensation model. This compensation model would incorporate a dialogic and horizontal process that empowers survivors, equalizes the power relations between the adjudicators and survivors, and removes the dichotomy of "inferiors" (survivors) and "superiors" (adjudicators, lawyers, RHSP workers, and other actors who govern the compensation process) (Zion 2005). It would comprise a community-based model that includes the relational aspect (Wilson 2001b) that is foregrounded in the elements of sharing and collective decision making, and is governed by the traditional cultural values of community members. The forum-based compensation model would also adopt a holistic approach to justice and healing, and it would

operate “with an eye on the past to understand how things have come to be, and an eye on the future to design measures that show the greatest promise of making it healthier for all concerned” (Ross 1996:15).

The process of de-commodification would also reduce the predatory practices of IAP lawyers whose firms operate on the contingency fee model that I described in Chapter 4. The contingency fee model often encourages IAP lawyers to exploit survivors financially and to select only high-value cases for legal representation. De-commodification of legal practices in the IAP would include the establishment of an impartial and independent legal team staffed with salaried, competent, and trained lawyers “with no personal financial stake” (Sarah, IAP lawyer, 8 June 2016). This model would reduce the risk of survivor victimization by IAP lawyers, who would be willing to take on less financially desirable cases that they would normally refuse to consider under the current contingency fee model.

The third insight relates to the transformation of the paternalistic tendency of the IAP to survivors only a single option of how to receive payment of their awards, which is in the form of one-time lump-sum payment. This approach to delivering financial compensation embodies paternalistic tendencies because it deprives survivors of choice regarding the form that their compensation payments take. In my interviews, a number of IAP lawyers and adjudicators shared with me that they felt that structured settlements that consisted of long-term payment plans might reduce the risk of revictimization (Sarah, IAP lawyer, 8 June 2016; John, IAP adjudicator, 18 May 2016; and Sean, IAP adjudicator, 18 May 2016). The risk of revictimization by the IAP awards is real, as I have noted earlier in my dissertation, and it is exacerbated by low levels of financial literacy among survivors, substance abuse issues, and vulnerability of

survivors to financial exploitation by their communities and family members (Canadian Broadcasting Corporation 2009; Aboriginal Peoples Television Network 2013).

In theory, structured settlement plans could potentially safeguard survivors' health, wellbeing, and safety by presenting them with an option to receive their periodic payments consisting of a portion of their IAP awards over time, which represents common practice in reparative justice around the world where governments provide victims with life-long individual reparations programs (Roht-Arriaza 2014; Rubio-Marín 2009). The option for structured settlements is currently absent from the IAP because the parties to the *Settlement Agreement* feared that it would be considered paternalistic, given the fact that civil court settlements generally are not designed with a built in option for structured settlements and this provision for Indigenous claimants in the IAP would constitute discrimination (Maria, IAP adjudicator, 15 June 2016). Ironically enough, it seems paternalistic and discriminatory *not* to offer this option to survivors and force them to accept a lump-sum, rather than to allow them to choose a payment plan that best suits their needs.

8.5 Limitations, concluding thoughts, and directions for future research

My dissertation research generated a critique of a financial compensation process based on empirical research with survivors. It could be mobilized as a theoretical and empirical framework for evaluating state-sanctioned reparations in settler colonial contexts with ongoing structural violence against Indigenous peoples. In the Canadian context, recent and current examples include the *Newfoundland Residential Schools Settlement* that provides compensation to previously excluded Indian Residential School students from Newfoundland and Labrador (Crown-Indigenous Relations and Northern Affairs Canada 2018) and the *Sixties Scoop*

Settlement, which is currently before the courts and, if approved, would compensate Indigenous survivors of forced adoptions in the 1960s (Global News 2018). Elements of my dissertation research could also be used to inform studies related to Common Experience Payments (CEP) and other types of material and symbolic reparations, including community events for survivors and commemorative initiatives, which ran parallel to the IAP and CEP, and made attempts to recognize the overall negative experiences of attending the Indian Residential Schools.

The overarching conclusion of my dissertation research is that power plays a central role in shaping the discourses of victimization and victimhood. Institutionalized power is distributed through a network of actors who, in the settler colonial context, reproduce the dominant ideologies of the settler colonial order through reparations programs. In effect, the relations between the administrators and recipients continue to mirror the relations between the colonizer and colonized. In the IAP, these relations disempower survivors and establish them as pawns in a reparations program that, one would think, would instead privilege their experiences and realities and position them as the key stakeholders whose justice needs would serve as the centrepiece of such a program. The IAP represents a process that further assimilates, revictimizes, and subordinates survivors to settler colonial rule.

My research project is bound by several methodological, empirical, and practical limitations. Methodologically, my recruitment strategy was inherently selective and it would have benefitted from a more substantive presence of survivor voices from across the country. The population of survivors who participated in my research interviews resided primarily in Ontario, with the exception of several survivors from Quebec and British Columbia. The perspectives of survivors on compensation from remote and Inuit communities would also help to expose the unique differences in relation to how they experienced the compensation process.

My research could also be more robustly informed by perspectives of survivor-activists, such as Peter Yellowquill, who openly protested and outright rejected the IAP, the Truth and Reconciliation Commission, and the *Settlement Agreement* more generally (Welch 2010). Their insights would be valuable in generating a more complete account of the deficiencies of the compensation process and developing alternative options to the current model.

Another methodological limitation relates to the types of interview questions that formed the basis of my fieldwork. Considering that this was an exploratory study on the IAP, the questions that I was asking my interview participants have evolved over the course of the project in response to the answers I was receiving from my participants and as a result of my own ongoing reflexivity as a researcher during the fieldwork phase. From my experience, I have learned that the initial selection and development of questions could have benefitted from greater collaboration with the key informants of my research populations. A pilot-based delivery of the initial set of interview questions would have also helped me to refine and focus the relevant themes that guided the data gathering portion of my fieldwork.

One of the theoretical and empirical limitations of my study that could potentially be investigated as part of future research projects is decolonization of reparations. My research project does not go far enough as to examine counter-hegemonic movements (Gramsci 1977) that challenge the IAP or how it could be decolonized, disrupted, unsettled, and dismantled. Although Chapter 7 built on insights of anti-colonial theory to explore how survivors and their allies might resist, challenge, and unsettle the IAP, I have discovered that the compensation process has largely remained without any systemic changes over the years and survivors' calls for a court-ordered review of the IAP and the *Settlement Agreement* have so far fallen on deaf ears (Canadian Broadcasting Corporation 2016; Aboriginal Peoples Television Network 2016).

A research project that examines decolonization of the IAP or reparations more generally could contribute to answering the larger questions in relation to counter-hegemonic approaches to transitional justice for Indigenous people in nations with ongoing settler colonialism.

Future research projects on the IAP could also benefit from the experiences of comparative (international) studies on compensation programs in nations that committed violence against Indigenous people and established formal compensation processes measures of redress. As an analytical starting point, these research projects could potentially centre indigeneity as a social and cultural attribute to examine the impact of compensation on Indigenous people in comparative contexts. As well, comparative studies on IAP or financial compensation more generally could involve approaches that investigate domestic reparations programs by adopting a liberal multiculturalist lens to explore how settler colonial power manages and integrates difference through reinforcing discourses of nation building and inclusion.

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Appendix A – Schedule of Interviews

Survivors

Matthew, 10 May 2016 and 15 May 2016
 Helen, 10 May 2016
 Sandra, 11 May 2016
 Paul, 12 May 2016
 Charles, Elder, 15 May 2016
 Donna, survivor and former Chief, 15 May 2016
 Gary, 17 June 2016
 Derek, 17 May 2016
 Del Riley, 17 May 2016
 Kevin, 18 May 2016
 Michael, 17 June 2016
 Susan, 29 June 2016
 Joseph, 4 July 2016
 Brian, 29 July 2016
 Jeffrey, 1 August 2016
 Jason, 1 August 2016

RHSP workers

Matthew, 11 May 2016 and 31 July 2016
 Michelle, 13 May 2016
 Donald, 14 May 2016
 Linda, 13 June 2016
 Jessica, 27 June 2016
 David, 29 June 2016
 Joseph, 4 July 2016
 Kristin, 5 July 2016
 Carol, 6 July 2016
 Andrew, 9 July 2016
 Melissa, 1 August 2016
 Anna, 5 August 2016
 Pamela, 15 September 2016

Leaders of Indigenous advocacy groups

Matthew, 12 May 2016
 James, 7 June 2016
 Eric, 22 June 2016
 Clyde, 30 September 2016

IAP lawyers and adjudicators

Jane, 11 February 2011
Sean, IAP adjudicator, 17 May 2016
Laura, 25 May 2016
Sarah, 8 June 2016
Maria, IAP adjudicator, 15 June 2016
Jodie, 20 June 2016
Jennifer, 28 June 2016
Richard, 4 July 2016
Mark, 6 July 2016
George, 15 July 2016
Robert, 15 July 2016
Ryan, 2016
Frank, 24 August 2016
Jordan, 25 August 2016

Church representatives

Steven, Anglican Church representative, 12 July 2016

Appendix B: Consent forms

Consent Form for Lawyers and Adjudicators, Resolution Health Support Workers, and leaders of Indigenous organizations

Title: *Violence, compensation, and settler colonialism: Adjudicating claims of Indian Residential School abuse through the Independent Assessment Process.*

Funding Source: Social Sciences and Humanities Research Council.

Date of ethics clearance: May 05, 2016.

Ethics Clearance for the Collection of Data Expires: May 31, 2018.

I _____, choose to participate in a study on compensation for Indian Residential School abuse. This study will examine how various practitioners involved in the Independent Assessment Process (IAP) understand its design and purpose, and what they believe it accomplishes. **The researcher for this study is Konstantin Petoukhov in the Department of Sociology and Anthropology at Carleton University in Ottawa.** He is working under the supervision of Professor Augustine Park in the Department of Sociology and Anthropology at Carleton University.

This study involves one 30-45 minute interview. With my consent, interviews will be audio-recorded. Once the recording has been transcribed, the audio-recording will be destroyed. My responses will be confidential. To protect my identity further, I may choose to make my responses completely anonymous.

Risks associated with my participation are no greater than I encounter in my everyday life. This research may benefit me by providing me with an opportunity to share my perspectives and opinions on the IAP.

My employment will not be affected by my participation in any way. My participation is voluntary and I have the right to end participation in the study at any time, for any reason, up until February 2017. I can withdraw by phoning or emailing Konstantin Petoukhov or his supervisor, Augustine Park.

If I withdraw from the study, all information I have provided will be immediately destroyed.

No compensation will be provided for my participation. Everything I share during the interview (the “research data”), including audio-recordings and any digitized notes will be password protected on my computer. Any paper copies of data (including any handwritten notes) will be kept in a locked cabinet at Konstantin Petoukhov’s residence in Ottawa. Once the project is completed, all confidential data will be made anonymous, kept indefinitely, and used in future studies.

The ethics protocol for this project was reviewed by the Carleton University Research Ethics Board, which provided clearance to carry out the research. Should I have questions or concerns related to my involvement in this research, I will contact:

CUREB contact information:

Professor Louise Heslop, Chair (CUREB-A)
 Professor Andy Adler, Vice-Chair
 Carleton University Research Ethics Board
 Carleton University
 511 Tory
 1125 Colonel By Drive
 Ottawa, ON K1S 5B6
 Tel: 613-520-2517
ethics@carleton.ca

Researcher contact information:

Name: Konstantin Petoukhov
 Dept: Sociology and Anthropology
 Carleton University
 Tel: 613-292-8171
 Email: konstantin_petoukhov@carleton.ca

Supervisor contact information:

Name: Augustine Park
 Dept: Sociology and Anthropology
 Carleton University
 Tel: 613-520-2600 x2593
 Email: augustine.park@carleton.ca

I agree to be audio-recorded: ____Yes ____No

I wish to have my responses made anonymous: ____Yes ____No
 (If yes, then my responses will no longer be confidential as they will not be connected to my identity).

 Signature of participant

 Date

 Signature of researcher

 Date

Oral Consent for Survivors

Hello, I'm Konstantin and I am a Ph.D. student in the Department of Sociology and Anthropology at Carleton University. I am under the supervision of Professor Augustine Park.

I am inviting you to participate in a study on the Independent Assessment Process (IAP). I would like to learn how you, a survivor, understand the IAP, its purpose and design, and what you believe the IAP accomplishes.

This study involves one interview that will take about 45 minutes. With your permission, the interview will be audio-recorded. Once I type it up, the audio-recording will be destroyed. I will keep everything you share with me securely at my home in Ottawa. Only my supervisor and I will have access to this interview. If you wish, I will also make your answers anonymous, which means that no one will connect your answers to your name. But, the Children of Shingwauk may know your identity because they helped me to recruit you.

I will keep this interview indefinitely so that I can use it to publish articles or for presentations.

The interview may be emotionally hard because it is about the IAP and residential school experiences. But, I will not ask questions about your time in the residential school or about your experiences with the IAP hearings. Also, you may skip any questions you do not wish to answer. The Children of Shingwauk have agreed to provide health and cultural support during and after the interview. Should you feel any distress, please let me know and I will arrange for you to see a CSAA worker. I hope this research may benefit you by providing you with an opportunity to share your thoughts and opinion on the IAP.

Your participation is voluntary and you stop at any time, up to February 2017 by letting me or my research supervisor know. If you choose to do so, all the information you provided will be destroyed. If you do this interview, any services you receive from the CSAA will **not** be affected.

To show my appreciation, I will be providing you with refreshments during the interview. I will also cover your local travel expenses. If you choose to participate in the interview at a place where food is served, I will pay for your meal.

The ethics protocol for this project was reviewed by the Carleton University

Research Ethics Board, which provided clearance to carry out the research. Should you have questions or concerns related to your involvement in this research, you may contact Louise Heslop (CUREB-A) at ethics@carleton.ca or at 613-520-2517.

You can also reach me at konstantin_petoukhov@carleton.ca or 613-292-8171. My supervisor can be reached at augustine.park@carleton.ca or 613-520-2600 x2593. Do you have any questions before we begin?

For researcher to complete:

Do I have your permission to begin: ☐ Yes ☐ No

Do you agree to be audio-recorded: ☐ Yes ☐ No

Do you wish to make your responses anonymous (I will reiterate what this means): ☐ Yes ☐ No

Date: _____

Researcher's Signature:

If you would like a copy of the finished research project, what is your mailing address or email? _____